

November 19, 2012

Mr. Jim Eichmann – Chairman
Mr. Ted Leugers – Co-Chairman
Mr. Tom Scheve – Member
Mr. Jim LaBarbara – Secretary
Mr. Jeff Heidel – Member

Item 1. – Meeting called to Order

Chairman Eichmann called the meeting of the Board of Zoning Appeals to order at 7:00 PM on Monday, November 19, 2012.

Item 2. – Roll Call of the Board

Mr. LaBarbara called the roll.

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

Also Present: Greg Bickford, Harry Holbert and Beth Gunderson

Item 3. – Opening Ceremony

Mr. Eichmann led the Pledge of Allegiance.

Item 4. – Swearing In

Mr. Eichmann swore in those providing testimony before the board.

Item 5. – Approval of Minutes

Mr. Eichmann stated the next order of business was to approve the October 15, 2012 meeting minutes.

Mr. Eichmann asked for any corrections to the October 15, 2012 meeting minutes. No response.

Mr. LaBarbara called roll.

All voted yes to approve the minutes.

Item 6. – New Business

Mr. Eichmann took a moment to review the process by which the Board of Zoning Appeals makes its decisions and the standards that are used to justify approval or denial.

B2012-18V
James Feldhaus
3752 Belfast Ave.
Variance

Harry Holbert presented the case and case history in a power point presentation. Mr. Holbert stated the proposed addition does not meet the current side yard setback requirement for the "B" residential district.

The board asked questions of Mr. Holbert.

Mr. Eichmann asked if an addition could be built as of right in the rear yard.

Mr. Holbert answered yes as long as the rear yard setback requirement was met.

Mr. LaBarbara asked if the proposed addition was in line with the existing house.

Mr. Holbert answered yes.

Mr. Eichmann asked if the existing carport was eight feet from the side yard property line.

Mr. Holbert stated it was setback approximately 5.75 feet from the property line but that without a survey, he cannot know the exact distance.

Mr. Leugers asked if the house was built prior to the current setback requirements.

Mr. Holbert answered yes.

Mr. Eichmann asked if the applicant was present to address the board.

Mr. Mark Feldhaus, the applicant, of 7305 Plainfield Road, Cincinnati, OH 45236, addressed the board.

Mr. Eichmann asked the applicant if the concrete pad under the carport was setback five feet.

Mr. Feldhaus said he believed it to be more than five feet back but did not have a survey to know for sure.

Mr. LaBarbara asked if the next door neighbor was OK with the proposed project.

The applicant answered yes.

Mr. Scheve asked if the proposed addition would extend as far as the roof line of the carport.

Mr. Feldhaus said no it would be 12 feet out in line with the existing concrete pad.

Mr. Heidel asked about drainage.

Mr. Feldhaus said drainage was addressed in the plan.

Mr. Eichmann asked if had thought about building the addition off the rear of the house instead.

Mr. Feldhaus said the homeowner wanted the addition to be off her kitchen.

Ms. Chris Callahan, the property owner, of 3752 Belfast Ave., Cincinnati, OH 45236, addressed the board. Ms. Callahan stated if the addition was off the rear of the house she would have to walk through a bedroom to get to it. The proposed addition would be a dining and sitting area which would make sense to be off the kitchen. She also said there would be drainage issues if built in rear.

Greg Bickford stated the lot in question is legal non-conforming as it has 65' of frontage and was platted prior to current zoning which in the "B" residential district now requires 70' of frontage.

Mr. Eichmann asked if anyone else from the public wished to comment.
Mr. Eichmann then closed the floor to comments and questions from the public and the board discussed the issues brought before them.

Mr. Leugers said he did not see a problem with granting the request since the zoning rules were changed after the house was built.

Mr. Eichmann stated his concerns about setting a precedent.

Mr. Eichmann asked Mr. Bickford if the applicant would need a variance to enclose the existing carport structure.

Mr. Bickford answered yes.

Mr. Eichmann entertained a motion.

Mr. Leugers motioned to approve case# B2012-18V as submitted.

Mr. LaBarbara seconded.

Mr. LaBarbara called roll.

Mr. Heidel – AYE
Mr. Scheve – AYE
Mr. Eichmann– NEA
Mr. Leugers – AYE
Mr. LaBarbara – AYE

Mr. Holbert stated that a resolution approving case# B2012-18V would be prepared for the December 17th meeting.

B2012-19V
George T. Cooper
11950 7th Ave.
Variance

Harry Holbert presented the case and case history in a power point presentation.
Mr. Holbert stated the privacy fence was installed without a permit in the side yard.
According to the Zoning Resolution, any fence in the side yard must be a maximum of 4' tall and 75% open.

The board asked questions of Mr. Holbert.

Mr. Scheve asked for the definition of the side yard and if the fence was moved to the rear yard if it would be permitted as of right.

Mr. Holbert noted the side yard of the property on the photo and said that a 6' privacy fence would be permitted as of right in the rear yard.

Mr. Eichmann asked how the new fence could be brought into compliance.

Mr. Holbert said the fence must be reduced to 4' tall and 75% open or 3' tall and 50% open.

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

Mr. George T. Cooper, the applicant, of 11950 7th Ave., Cincinnati, OH 45249 addressed the board. He said they were having problems with their air conditioner freezing up and were told by a contractor part of the problem was that it was so close to previous location of fence. Because of that and security issues with two bedroom windows on that side of the house, he moved the fence to the front corner of the house.

Ms. Carolyn Lay, the property owner, of 11950 7th Ave., Cincinnati, OH 45249 addressed the board. Ms. Lay said they have a dog and grandchildren trying to protect by fencing in the yard.

Mr. Eichmann asked if their neighbor next door was ok with the fence.

Mr. Cooper said the neighbors all think it looks good. Mr. Cooper stated that he did not know he couldn't install a privacy fence in the side yard nor was he aware he needed a permit.

Mr. Eichmann asked if Mr. Cooper had thought about bringing the fence into compliance with the side yard height and openness requirements.

Mr. Cooper said he wanted the privacy and reiterated his concerns about theft and safety.

Mr. Eichmann suggested moving it back to the rear yard.

Mr. Cooper said he did not want to leave two windows and the A/C unit exposed.

Mr. Eichmann thanked the applicants and asked if anyone else was present who wished to comment.

Ms. Linda Engelhart of 9095 Shadetree Dr., Cincinnati, OH 45242, commented that the fence was very attractive.

The Board discussed the issues brought before them.

Mr. Leugers said he did not see a hardship.

Mr. Scheve said he was conflicted because the fence looks good and is an improvement to the neighborhood.

Mr. Leugers made a motion to deny case# B2012-19V.

Mr. Heidel seconded.

Mr. LaBarbara called roll.

Mr. Heidel – AYE

Mr. Scheve – AYE
Mr. Eichmann– AYE
Mr. Leugers – AYE
Mr. LaBarbara – NEA

Mr. Eichmann stated that the request had been denied.

Mr. Bickford stated that a resolution denying the variance request for case# B2012-19V would be prepared for the December 17th meeting.

B2012-17C
Moeller High School
9001 Montgomery Road
Conditional Use

Harry Holbert presented the case and case history in a power point presentation. Mr. Holbert explained the case was a request for changes to a previously approved Conditional Use for athletic fields at Moeller High School. The applicant was requesting additional bleachers, speakers mounted on posts and the installation of a gate on the west property line. Mr. Holbert noted the conditions of the previously approved Conditional Use.

The board asked questions of Mr. Holbert.

Mr. Eichmann asked if it was correct that the gate itself was part of the previous approval and that only the location was yet to be decided.

Mr. Holbert answered yes.

Greg Bickford said the gate was added to the application as part of the record but since the neighbor had agreed to it, the applicant could install the gate as of right.

Mr. Eichmann said the number of speakers will increase from two to six and asked if only two would be in use at a time.

Mr. Holbert stated two speakers on the soccer field, two on the football field and two at the concession area. The soccer field and football field speakers would not be used concurrently. Mr. Holbert said many sound readings had been done at the property lines and often the highway noise was louder than the 55 decibel limit to which the applicant had been limited.

Mr. Eichmann asked about the south side bleachers. The applicant had stated it was a safety hazard for the students to move back and forth and the request was for the bleachers to be permanent with additional buffering added. Mr. Eichmann wondered where the additional buffering would go.

Mr. Holbert said the additional buffering would be behind the bleachers.

Mr. Eichmann said didn't seem to be enough room for it.

Mr. Holbert referred him to the applicant.

Mr. Eichmann swore in additional members of the public who had arrived late to the meeting.

Mr. Tom Fitz, the applicant representing Moeller High School, of 14044 Bob White Ct., Cincinnati, OH 45242, addressed the board.

Mr. Fitz said the neighbors had requested the gate, but had never agreed on a location until now. Mr. Fitz stated room would be made for additional buffering behind the bleachers by cutting back the existing concrete pad. Mr. Fitz said he had met with the neighbors to understand their concerns. The proposed plan would include extending the buffer an additional 20' to the west and 6' to 8' to the east. He said the goal of the new sound system would be to make sure it was consistently at or below the 55 decibels. He also said the new system would have directional speakers directed away from neighbors and that the speakers at the viewing platform by the concession area would be used with the football speakers but not with the speakers on the soccer field.

Mr. Scheve asked Mr. Fitz what his relationship was to Moeller.

Mr. Fitz said he is on the board and is the head of the Athletic Commission.

Mr. Scheve asked for clarification on how there could be more speakers but no increase in the decibel level at the property lines.

Mr. Fitz said the plan was designed by sound engineer and two additional speakers at concession area would not increase decibels.

Mr. Scheve asked for clarification on location of poles.

Mr. LaBarbara asked about the number of bleachers.

Mr. Fitz said they are requesting three sets of permanent bleachers.

Mr. Scheve asked if the bleachers were approved previously.

Mr. Fitz said they were approved but were supposed to be moved from view of neighbors. Their request was to leave bleachers in place and add buffering.

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

Mr. Ken Koehler of 8937 Appleknoll Lane, Cincinnati, OH 45236, addressed the board. Mr. Koehler said his property is adjacent to the fence next the soccer field. He stated that bleachers were never part of the original proposal in 2005-06 and were added without the knowledge of the neighbors. Mr. Koehler said he had records of 29 emails he sent regarding dead or dying trees along the buffer and also concerning the sound system over the past five years. He said twelve of the 29 complaints were because someone had disabled the sound system and that he is in favor of anything that will improve it. Mr. Koehler said his views of the bleachers are not blocked by the buffering, the plantings are not thriving and many are dead or dying.

Mrs. Mary Koehler of 8937 Appleknoll Lane, Cincinnati, OH 45236, addressed the board. Mrs. Koehler said that she cannot support this plan whole heartedly. She stated that when there have been issues in the past, she and her husband will complain and it will

get better for a week or so and then be a problem again making her feel like she has to constantly police Moeller. She said they were told there would be no bleacher on the property line but it was not put in writing. She would prefer the bleachers be in the middle between the two fields. A compromise would be the additional buffering in the proposal but because they sometimes erect additional bleachers, the buffering may not extend far enough.

Mr. Fitz said the current plan would extend the buffer the Koehler's whole property line.

Mrs. Koehler said the arbor vitae are not thriving and many are brown on her side. Also some of the mature trees have died because of the drought so the buffer on paper does not match up with reality. Mrs. Koehler said she would like the sound system to be used only for Moeller varsity sports. She indicated most of the problems had occurred when other schools using the Moeller fields.

Mr. Eichmann asked if Moeller has a responsible Moeller representative present when others use fields.

Mr. Fitz answered yes.

Mrs. Koehler said she would like all details in writing in any approval to make sure any conditions can be enforced.

Mr. Fitz said he has budget approval to remove any dead trees and replace with viburnum.

Mrs. Koehler said viburnum would not be tall enough.

Ms. Linda Engelhart of 9095 Shadetree Dr., Cincinnati, OH 45242, commented that her home is pretty far from the Moeller athletic fields and that she still has so much noise in her bedroom at times that she cannot sleep. She suggested that the speakers be replaced with a more reliable system that does not allow the sound to travel so far. She said the buffers in place offer only visual relief and do not block sound. She said her only concern with the gate is that it be locked during the school day so students do not park on neighborhood streets and walk through the gate to school.

Mr. Fitz said the new speakers will be smaller and will be on poles and aimed down on the spectators instead of out towards the neighbors.

Harry Holbert stated that Moeller had been working with sound engineers to correct issues and that since a compressor had been installed many of the issues had been remedied. He also stated it is difficult to replant the buffer during the drought and heat of summer because they would be setting it up for failure. Mr. Holbert said in his experience when the township received complaints, Moeller has been very responsive.

Mr. Scheve asked about consequences for going over the 55 decibel limit.

Mr. Bickford said there is due process to correct violations including getting legal counsel involved and obtaining a court ordered injunction.

Mr. Koehler said he had worked with Mr. Holbert since 2008 over sound issues and it was not a problem again until 2010.

Mr. Fitz stated that the new sound system would not permit tampering.

Ms. Patricia Welling of 8931 Appleknoll Lane, Cincinnati, OH 45236, addressed the board. Ms. Weller reiterated the Koehlers concerns including that the bleachers were not on the original plans and that they have been extended further and further along her property line. She would like to hear the new sound system before it is approved.

Ms. Annette Burton of 7369 Timberknoll Drive, Cincinnati, OH 45242, addressed the board. Ms. Burton said All Saints abuses the sound system but now that her house has new windows, she doesn't hear it as much.

Mr. Eichmann asked if there were any more comments or questions from the public.

No response.

Mr. Eichmann closed the floor and the board discussed the issues brought before them.

Mr. Scheve asked if the applicant needed a variance for the bleachers or the concrete pad.

Mr. Bickford said he was told by legal counsel that all those things like bleachers, goal post etc. go along with the approved use of the property as an athletic field and do not necessarily have to be spelled out on the plans. The concrete pad is allowed as of right as long as it is not within the required buffer.

Mr. Eichmann asked if the board could limit the number of bleachers.

Mr. Bickford answered yes.

Mr. LaBarbara asked about moving the bleachers to the center.

Mr. Holbert said would be a safety hazard to have spectators so close to the football field.

Mr. Eichmann asked if there had been any issues with the bleachers on the football field.

Mr. Holbert said he was not aware of any complaints about those bleachers.

Mr. Scheve stated lighting experts never testify before the board and that we don't need the sound engineer to testify as long as the decibel level submitted in the plans meets the approved decibel level.

Mr. Leugers said he has no problem with the gate or the sound system and the additional buffering will take care of the problems with the bleachers.

The board discussed the buffer and the possibility of extending it further. Discussion ensued about whether to limit the number of bleachers.

Mr. Eichmann made a motion to approve case# 2012-17C with the following conditions:

1. The gate must be locked except when there is an activity on the field.
2. The bleachers on the soccer field are limited to the three that can fit on the concrete pad.
3. The buffer must include additional plantings to the west to be in line with the lower buffer.

Mr. Scheve seconded the motion.

Mr. LaBarbara called roll.

Mr. Heidel – AYE

Mr. Scheve – AYE

Mr. Eichmann– AYE

Mr. Leugers – AYE

Mr. LaBarbara – AYE

Mr. Bickford stated that a resolution approving the Conditional Use request for case# B2012-17C would be prepared for the December 17th meeting.

Item 7. – Date of Next Meeting

Mr. Eichmann noted the date of the next meeting – Monday, December 17, 2012.

Item 8. – Adjournment

Mr. Eichmann adjourned the meeting at 9:30 PM.

Minutes Recorded by: Beth Gunderson, Planning & Zoning Assistant