

**COLERAIN TOWNSHIP BOARD OF ZONING APPEALS**

4200 Springdale Rd., Cincinnati, Ohio 45251

Regular Meeting

**Wednesday, April 23, 2014 - 7:00 p.m.**

Meeting called to order: 7:00 p.m.

Pledge of Allegiance.

Explanation of procedures.

Roll Call. Present: Mr. Price, Mr. Bartolt, Mr. Reininger, Mr. Roberto, Mr. Martin.

Swearing in: appellants, attorneys and all speakers in the cases.

Hearing of Appeals:

- A. Case No.: BZA2014-02  
Application: Variance for privacy fence - Article/Section 12.8.4
- Case No.: BZA2014-03  
Application: Variance for accessory structure (tree house) Article/Section 10.2.3  
Location: 2614 Bellbranch Ct., Cincinnati, OH  
Applicant/Owner: Christopher R. Gaines

Staff: Provided aerial map of site. Property is zoned R-6. The applicant is seeking relief for a previously constructed privacy fence with the finished side not facing out and an accessory structure that stands above the maximum permitted height of 15 feet and is located closer than 5 feet from the property line. Background was provided. There has been a long standing dispute between this property and 2606 Bellbranch. The disputants have filed zoning and police complaints against each. After many contacts with both owners, the investigation concluded and notices of violations were issued on both properties. The main issue between the 2 property owners revolved around a commercial trailer associated with the applicant's deejaying business. In 2009 Mr. Gaines applied for a variance for a commercial trailer on his driveway and it was granted with conditions, which included a 1 year limitation. When that variance expired, Mr. Gaines came back and at that time the variance request was denied. From the time it was denied through 2012 and 2013, the commercial trailer continued to be stored on the driveway, which led to the investigations and violation notices. The owners of 2606 Bellbranch corrected their violations and Mr. Gaines did not. In June, 2013 the Township filed a lawsuit against Mr. Gaines to order that the commercial trailer not be stored on the property and the result of the lawsuit was a settlement wherein Mr. Gaines admitted to being in violation for the commercial trailer as well as for the accessory structure and fence. The issue with the commercial trailer has been addressed. The conclusion for the other 2 issues was that Mr. Gaines petition a variance from the Board of Zoning Appeals for the fence and accessory structure. Staff findings are as follows:

1. With or without the variances requested, the applicant would be able to yield a reasonable return on the property;
2. Without a variance the applicant would not be able to enjoy the beneficial use of the accessory structure that was constructed without a zoning certificate;
3. The applicant has reported that the neighboring property owners will not permit him on their property and therefore is unable to complete the construction of the outward facing portion of

the fence. If this is true, the applicant faces a practical difficulty in his compliance with the zoning resolution;

4. Given the unique and particular circumstances of this property the variances requested are not substantial;

5. The essential character of the neighborhood has been altered by Mr. Gaines construction of the accessory structure and fence in contravention to the zoning resolution but not substantially so;

6. Adjoining property owners have, in the past, alleged that they suffer a substantial detriment as a result of the construction of the accessory structure and fence;

7. The alternative to a variance for the accessory structure and fence is the deconstruction and/or redesign and relocation of the accessory structure and the reconstruction of the fence.

8. The variance would not adversely affect the delivery of governmental services;

9. Given the context of this case and by taking into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood and broader community, staff finds that substantial justice would be done by approving these two variances with conditions.

Staff recommended approval with following condition: The accessory structure and fence may not be expanded without consent of the Board of Zoning Appeals.

Applicant: Christopher Gaines, 2614 Bellbranch. Mr. Gaines said the previous Planning & Zoning Director, Susan Roschke, was aware of these situations and he contacted her, but she told him she cannot comment. When he installed the new fencing, the police were called because the neighbors said he was trespassing. A meeting was then held with Mr. and Mrs. Beimesche, Susan Roschke, Officer Jennifer Sharp and he and his wife, and the conclusion was that the fence was okay. Mr. Gaines cited issues at the Beimesche's home that need to stop if he is forced to tear down the treehouse. He said the treehouse is a play structure, not an accessory building. He said he stopped working on it because he wasn't sure if he was going to have to tear it down. Susan Roschke said that no permit was required because it is a treehouse. Cited documentation from the Township stating this. Mr. Gaines cited financial reasons to have to re-do the fence.

Courtney Gaines, 2614 Bellbranch. When the treehouse was built, the Township told them since it's playground equipment, a permit was not needed. In 2011 the meeting was held and it was all settled. Doesn't understand why it's now an issue. Said she understands that the trailer is a different issue.

Public Input: Greg Beimiesche, 2606 Bellbranch. Not in opposition to the variances, but has concerns. Wants a peaceful resolution, but fears Mr. Gaines won't respond favorably. Provided pictures of existing fence; it is partially stained and large staples are protruding which are hazardous. He would like the fence to be made safe and finished. The only issue with the treehouse is that it's unfinished. He has no problem with the Board granting the variances. He's a 24 year resident and thanked the Board for their attention.

Steve McClellan, 2622 Bellbranch. Lives on the west side of 2606. Before the fence was constructed, Chris asked him about the fence and he told him it had to be built with the finished side out as the code says. Staples stick out on all 3 levels of the boards. There is a play set in the yard and anyone coming up against the fence will be harmed. If the fence was finished, it would eliminate that problem. As far as the accessory structure, he wasn't at the meeting, but the structure exceeds the maximum height and he thinks it should be finished. It's been unfinished for a couple of years. Doesn't think the location is a problem. Asked that these

issues be completed in a timely manner. It took 2 years for the commercial trailer to be removed. Provided pictures of the fence for the record.

Motion to close public input by Mr. Martin, 2<sup>nd</sup> by Mr. Price. Motion carried.

BZA2014-02

Board Deliberation: The majority of the Board agreed that the best solution would be to rotate the fence so that the finished side is on the outside. Mr. Gaines cited issues with his dogs being able to get out of the yard and reiterated that during the mediation meeting, this issue was resolved. The Board noted that they have no facts other than what is before them. Mr. Beimesche said he doesn't want Mr. Gaines to do unnecessary work; he just wants the fence to be finished and the staples cut off. Concern was expressed over the fact that the trailer issued was ignored for years. It was determined that the applicant has 2 options; he can stain the fence and grind down the staples, which would require a variance or he can rotate the fence so that it is in compliance. Mr. Milz suggested that the applicant get a zoning certificate because it will become a new fence.

Board Action: BZA2014-02 – Motion by Mr. Martin to deny the variance and that the fence be reinstalled with the finished side facing out within 30 days, 2<sup>nd</sup> by Mr. Price.

Roll call: Mr. Price – yes, Mr. Bartolt – no, Mr. Roberto – yes, Mr. Martin – yes, Mr. Reininger – yes.

BZA2014-03

Board Deliberation: Mr. Milz said that in the settlement agreement, Mr. Gaines agreed that the treehouse stands above 15 ft. in height. Questions were raised why Mr. Gaines stopped working on the treehouse, how will it be finished, what is the timeframe and how is it anchored. Mr. Gaines said it will be finished with siding, completed within a few months and is attached to a tree with 3 other anchor points. It was noted that there is nothing peculiar about this property that justifies an accessory building to be taller than 15 ft. The Board asked the neighbors if they are in opposition to the treehouse and Mr. Beimesche said they are not opposed to it as long as it's finished with an attractive earth tone appearance.

Board Action: BZA2014-03 – Motion by Mr. Martin to deny variance, 2<sup>nd</sup> by Mr. Bartolt.

Roll call: Mr. Price – no, Mr. Bartolt – no, Mr. Roberto – no, Mr. Martin – yes, Mr. Reininger – no.

Motion by Mr. Roberto to grant variance with stipulation that the height not exceed existing 15 ft. and that it be completed in a neutral color within 30 days after the zoning certificate is issued, 2<sup>nd</sup> by Mr. Price.

Roll call: Mr. Price – yes, Mr. Bartolt – yes, Mr. Roberto – yes, Mr. Martin – no, Mr. Reininger – yes.

B. Case No.: BZA2014-04  
Application: Variances for redevelopment of gas station – Articles/Sections 8.3.1, 8.4.2(C), 8.4.6(C), 12.9.4, 14.6.1, 15.8.3(G)  
Location: 9760/9780 Colerain Ave., Cincinnati, OH  
Applicant/Owner: Gilligan Oil Company

Staff: The applicant is seeking relief from sections of the Zoning Resolution to allow for the redevelopment of the site. Aerial view of the site showing existing conditions was provided. The redevelopment encompasses both properties. Proposed project includes complete demolition of all structures. The existing gas canopy sits in the front yard setback. There will be a convenience store with a Dunkin Donuts with a drive thru and a Popeyes Chicken located on the eastern side of site. Currently there is a billboard sign which will be removed and not replaced. The applicant is proposing streetscaping with a landscape amenity included. There will also be removal of 2 curb cuts making it much safer. ODOT required the elimination of the southern most right in/out lane. The result is that the gas canopy has been moved to the south about 6 ft. Staff findings are as follows:

1. The gas station canopy extends less than 5 feet into the Colerain Ave. front yard setback and less than 10 feet into the Springdale Road front yard setback. On both frontages, the required setback is 50 feet. The existing gas canopy is significantly deficient in terms of meeting front yard setbacks. The variance would bring the site closer to compliance with the law and is not substantial;
2. The drive-thru canopy on the west side of the Dunkin' Donuts/GoCo station extends into the setback by less than three feet. The variance is not substantial;
3. The Popeye's Restaurant building extends into the front yard setback. The existing vacant car wash that this building would replace, has a greater front yard deficiency and a variance would bring the site closer to compliance with the law.
4. The maximum impervious surface ratio permitted in a B-2: General Business district is 75%. The applicant proposes an ISR of 90%. The existing ISR on the property is greater than 90%. The variance would bring the site closer to compliance with the law;
5. The applicant proposes to install landscaping in the parking area in an amount less than 15%. Given the existing condition, the deviation from the parking area landscaping requirement is not substantial;
6. The applicant proposes wall signage in excess of 50 SF on the west façade of the Dunkin' Donuts/GoCo store. The signage includes an image of a cup of coffee which meets our definition of a sign but is not conventional. The unique aspects of this sign on this site results in an attractive facade and is not substantial;
7. The applicant proposes 45 SF wall signage on the south facade of the Popeyes Restaurant building, exceeding the 32SF permitted. The building is exceptionally narrow and in this particular case and on this particular site, the variance is not substantial and aligns with the architectural features of the building;
8. The applicant proposes an outdoor lighting scheme with an average illumination of 2.35 footcandles, exceeding the maximum illumination of 2.0 foot candles. This variance is not significant;
9. The intersection of Colerain and Springdale is one of the most important intersections in the township;
10. Colerain Township will be investing over two million dollars in the burial of utilities at this intersection to improve the aesthetics and enhance the image of the township;
11. The applicant proposes to remove the existing billboard located on the site, thereby decreasing the visual clutter and improving the aesthetics of the area;
12. The applicant proposes a robust streetscape landscaping plan improving the aesthetics of the intersection;
13. The applicant proposes to demolish two vacant buildings (former car washes);
14. The applicant proposes to demolish the building currently occupied by CarQuest. This building has been in violation of the property maintenance resolution of the Township since at least November 21, 2013 when a Notice of Violation was issued for peeling paint and oxidation stains on the building's exterior;

15. The redevelopment, when taken as a whole, is a needed and welcome improvement at this important intersection;
16. It is unclear whether the owner of the property would be able to yield a reasonable return without the variances;
17. The essential character of the area would be substantially altered for the better as a result of the issuance of these variances;
18. Adjoining property owners would not suffer a detriment as a result of the granting of the variances, in fact they likely would realize benefits accruing from the redevelopment and investment in the property;
19. Many of the variances requested could be obviated by some other means but the resulting product would be less desirable than the redevelopment proposed;
20. Given the location of this project and by taking into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood and broader community, staff finds that substantial justice would be done by approving these variances with conditions.

Staff recommended approval of the variances requested with the following additional conditions:

1. The existing billboard shall be removed and not replaced;
2. The streetscape lighting fixtures and landscaping shall be installed as described in the proposed site plan;
3. The project shall in all other ways comply with the zoning resolution;
4. The project shall in all ways comply with the proposed site plan.

Applicant: Pat Gilligan, Gilligan Oil, 625 Eden Park Dr. Agrees with everything that Mr. Milz said. He has owned this Shell site since 2006. They are in contract with the property to the north to be included in the redevelopment. They currently operate several Shell sites with Dunkin Donuts and Popeyes. Popeyes requires a free standing building, so in order to get circulation for a drive thru, a variance is needed. There will be approximately 9,500 sq. ft. total for the development. The existing 30 ft. Shell pole sign that is currently grandfathered in will be coming down and replaced with a sign that is in compliance with the code.

Public Input: Matt Tietsort 8448 Lyness. Looking forward to the project. Everything looks good. Traffic looks good. Reminded the BZA to keep in mind that the code is restrictive, but allows variances and thinks they come into play with this project. Wants businesses to come in to the Township and to stay and prosper. A lot of his friends are excited to see Dunkin Donuts return. One friend has said let the coffee wars begin. Asked are vehicles going to be able to make a left turn onto Springdale. Applicant said it will be a full curb cut.

Frank Birkenhauer, Assistant Administrator and Director of Development, resides at 6722 Kern Dr. Has been the Director of Development for 17 years. Leslie Pool and CarQuest have leases. The structures are deteriorating. The parcels are too small for redevelopment. Current structures were built in the 60s. He is a member of the Colerain Corridor Task Force which has encouraged consolidation of parcels. He reiterated that the existing 30 ft. pole sign will be removed. This corner is key to revitalization of the area.

Gary Middleton, 3565 Vernier. Lived in Colerain since 1969. Watched Northgate being built. Only issue is when coming off of Springdale; it gets backed up. Heard Dunkin Donuts was coming back to the Township. Colerain is booming left and right. Has seen business come and go. Excited for this development. Doesn't have issue with dividers on Colerain, but people do get stuck on them. Likes new development; likes layout. Can't wait for Dunkin Donuts to come back.

Motion to close public input by Mr. Roberto, 2<sup>nd</sup> by Mr. Price. Motion carried.

Board Deliberation: Question was raised if the Dunkin Donuts coffee cup sign was lit and Mr. Gilligan said there is a small light above it, but it's more of a decoration. Questions were raised about landscaping in the parking area, footcandles and fence to the north. Mr. Gilligan said because of the turning radius, the landscaping had to be removed, and the intensity of lighting is under the canopy and is typical. Mr. Milz advised the Board that there are no buffer requirements when abutting zone classifications are business. Question was raised if all of the entry points on Colerain are necessary and Mr. Gilligan said the current site has 5 curb cuts and 2 have been eliminated on the south portion. Concern was expressed over the size of the development and other sites that Mr. Gilligan owns which have smaller buildings were cited. Question was raised if there is a standard that allows the Board to grant a variance because it will bring a site closer into compliance. Question was raised if the applicant can get a reasonable return without Popeyes and Mr. Gilligan said they will not do this project without Popeyes. Scott Sollmann, legal counsel, advised the Board that the Ohio Supreme Court has ruled that a Board of Zoning Appeals maintains a wide latitude in deciding whether or not to grant variances. Mr. Gilligan said that they are investing a substantial amount of money into this development and they're improving the site in every aspect. They're adding the additional parcel to the development and losing 2 curb cuts. Mr. Reininger asked what is the time line and Mr. Gilligan said they hope to open in December.

Board Action: Motion to approve variances as requested and recommended by staff by Mr. Roberto, 2<sup>nd</sup> by Mr. Price.

Roll Call: Mr. Price – yes, Mr. Bartolt – yes, Mr. Roberto – yes, Mr. Martin – no, Mr. Reininger – yes.

C. Case No.: BZA2014-06  
Application: Variance for front yard setback – Article/Section 7.3.1, Table 7-2  
Location: 2629 John Gray Rd., Cincinnati, OH  
Applicant: Thomas Dunn  
Owner: Michael Berry

Mr. Bartolt was recused and Mr. Kelley was seated.

Staff: Aerial map of site and surrounding properties was provided. Zoning is R-6. The applicant applied for a porch addition and because it is covered, it must meet the front yard setback. The code states that uncovered porches which do not extend more than 3 feet above floor level of the ground floor may project into a required front yard (§12.3.2) and open unenclosed porches may project into the front yard for a distance not exceeding 10 feet (§12.3.3), however, it is covered. It is located in the northern portion of the Township. Staff findings are that all buildings in the 2600 block of John Gray sit back about 35 ft. from the right of way and no other properties have covered porches in the front yard setback; it would be contrary to the purpose to Article 7; there is no unique practical difficulty that sets it apart from neighboring properties; the practical difficulty alleged could be addressed by other means; variance would not adversely affect delivery of government services; character of neighborhood is that homes are built with similar setbacks and staff recommended denial.

Applicant: Tom Dunn, Architect, 800 Compton Rd. They are adding a modest porch which will enhance the appearance of the house, creating an arch effect. Without a covering over the porch, the owner can't greet guests and children can't wait for the school bus. None of the neighbors object to it.

Brad Jones, 2629 John Gray. As Mr. Dunn stated, they're not only trying to enhance the look of house, but the wind comes from the north and west and rain comes in the house. Ice forms around the weather stripping and they're unable to open the front door. Also, there is no protection when packages are delivered and there is no garage on the house or rear porch where packages could be left. They cannot go out of the house without being out of the weather. Provided photographs for the record. The house faces John Gray. There is a subdivision behind him and he counted at least 15 houses that have porches that extend into the front yard. Mr. Milz said that there are no houses in his block, but there are several in the neighborhood.

Motion to close public input by Mr. Roberto, 2<sup>nd</sup> Martin. Motion carried.

Board Deliberation: There was discussion whether or not the porch addition meets the regulations set forth in Articles 12.3.2 and 12.3.3. Although the porch has a roof over it, it is not enclosed. Mr. Milz stated that the applicant may ask for an interpretation from the Board of Zoning Appeals, and it was decided that the Board would give their interpretation of an open unenclosed porch. The Board decided that porches that are open and unenclosed may have a roof. Therefore, the proposed porch addition meets the regulations set forth in Articles 12.3.2 and 12.3.3 and may extend into the front yard setback, and a variance is not needed.

Board Action: Motion by Mr. Martin to interpret 12.3.2 and 12.3.3 that an open unenclosed porch may have a roof, 2<sup>nd</sup> by Mr. Roberto.

Roll call: Mr. Price – yes, Mr. Kelley - yes, Mr. Roberto - yes, Mr. Martin – yes, Mr. Reininger – yes.

Question was raised if the Board has the authority to refund the appeal fee to the applicant. Mr. Milz stated that there would be a fee for an interpretation from the Board of Zoning Appeals. It was decided that the fee will be an administrative decision.

Resolutions for Adoption: None.

Unfinished Business: None.

Approval of Minutes: Motion by Mr. Roberto, 2<sup>nd</sup> by Mr. Price to approve minutes of March 26, 2014 meeting. Motion carried.

Administrative Matters: Mr. Milz advised the Board of the number of cases in April and the meeting time may need to be changed. Motion to change meeting time by Mr. Roberto, 2<sup>nd</sup> by Mr. Price to 6 p.m. Mr. Reininger advised that the meeting may instead end up being split and held on separate dates.

Adjournment: Meeting adjourned by motion at 9:20 p.m. Motion carried.

Respectfully Submitted:

\_\_\_\_\_  
Rebecca J. Reno, Zoning Recording Secretary

Secretary:

\_\_\_\_\_  
Robert W. Martin, Jr., Secretary

Accepted by:

\_\_\_\_\_  
Thomas W. Reininger, Chairman