

June 20, 2016

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

Item 1. – Meeting called to Order

Chairman Eichmann called the meeting of the Board of Zoning Appeals to order at 7:00 P.M. on Monday, June 20, 2016.

Item 2. – Roll Call of the Board

Mr. LaBarbara called the roll.

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

Also Present: Harry Holbert, Beth Gunderson and Attorney Rob Butler

Item 3. – Opening Ceremony

Mr. Eichmann led the Pledge of Allegiance.

Item 4. – Swearing in of Those Providing Testimony

Mr. Eichmann swore in all those providing testimony.

Item 5. – Approval of Minutes

Mr. Eichmann stated the next order of business was to approve May 16, 2016 meeting minutes.

Mr. Eichmann asked for any corrections to the May 16, 2016 meeting minutes. No response.

Mr. Scheve made a motion to approve the May 16, 2016 meeting minutes.

Mr. Heidel seconded.

Mr. LaBarbara called roll to approve the minutes.

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

Item 6. – Old Business

SYCB160010
Trinity Community Church
3850 E. Galbraith Road
Variance

Mr. Holbert presented the resolution denying the variance request for Case SYCB160010.

Mr. LaBarbara called roll.

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

SYCB160011
Leesman Engineering
7450 Keller Road
Conditional Use

Mr. Holbert presented the resolution approving with conditions the conditional use request for Case SYCB160011.

Mr. LaBarbara called roll.

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

SYCB160012
Christopher Finney
7435 Kenwood Road
Variance

Mr. Holbert presented the resolution approving with conditions the variance request for Case SYCB160012.

Mr. LaBarbara called roll.

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

Mr. Eichmann explained what a variance is and how the Board of Zoning Appeals arrives at decisions regarding these requests. He then explained the process by which the public hearing would proceed.

Item 7. – New Business

Case: SYCB160013
Applicant: Dennis Lange
Location: 3932 Limerick Avenue
Request: Variance

Mr. Holbert presented the case and case history in a Power Point presentation. Mr. Holbert explained the applicant requests a variance to section 10-3.3 to allow for the

construction of a 624 square feet detached garage. He noted the property is permitted a maximum 525 square feet of accessory use structures. Mr. Holbert showed the existing conditions on the property and a site plan showing the proposed new garage.

The Board asked questions of Mr. Holbert.

Mr. Scheve asked if the existing and proposed structures meet the setback requirements.

Mr. Holbert answered yes.

Mr. Eichmann asked if the height of the existing and proposed garage are compliant.

Mr. Holbert answered yes noting the height is measured to the center of the truss.

Mr. Heidel asked if the applicant would be expanding the driveway.

Mr. Holbert deferred to the applicant.

Mr. LaBarbara asked if the applicant had started construction.

Mr. Holbert answered not to his knowledge.

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

The applicant, Mr. Dennis Lange, of 3932 Limerick Ave., Cincinnati, OH 45236, and Robert Hartman, of 4138 Lansdowne Ave., Cincinnati, OH 45236, who drew up plans, addressed the Board. Mr. Lange said he would be tearing the old garage down and will have a new concrete pad constructed for the new garage. He pointed out the existing garage is quite close to the house and the new garage would be further back on property.

Mr. Eichmann asked what the applicant's hardship is.

Mr. Lange said he would like a place to store his boat and car along with yard tools in the winter. He noted he would not be taking the boat in and out during the warmer months. Mr. Lange said he needs an eight feet tall garage door to have room for boat.

Mr. Scheve asked for the square footage of the existing garage.

Mr. Holbert answered he did not measure it but that it is smaller than the proposed garage.

Mr. Scheve asked why the applicant could not rebuild a garage that is a compliant size.

Mr. Lange answered the boat on its trailer will not fit in a 525 square feet garage.

Mr. Eichmann asked Mr. Holbert if the garage would have a size limit if it were attached to the house.

Mr. Holbert answered an attached garage would have to meet the setback requirements for the principal structure.

Mr. Eichmann noted if the applicant constructed an attached garage, it would probably have to be side entrance. Mr. Eichmann asked Mr. Lange if he had thought of any other options such as storage facilities for his boat or parking the boat in the garage but not the car.

Mr. Hartman said an attached garage would not work because the angle would make it difficult to get the boat inside.

Mr. Lange said the proposed 26 feet length would still be necessary just for the boat without car but it could be narrower.

Mr. Holbert said a 20 feet by 26 feet garage would probably accommodate the boat.

Mr. Lange said the trailer the boat sits on is the problem.

Discussion ensued about possible options.

Mr. Lange said the main reason he requests the variance for the larger garage is to be able to fit yard tools, his car and his boat inside the garage.

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

No response.

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

Mr. Leugers said he does not see a hardship saying the granting of a variance would be a special privilege.

Mr. Scheve agreed.

Mr. Eichmann entertained a motion.

Mr. Leugers made a motion to deny the variance request for Case SYCB160013.

Mr. Scheve seconded.

Mr. LaBarbara called roll.

Mr. Scheve – YES

Mr. Leugers – YES

Mr. Eichmann – YES

Mr. Heidel – YES

Mr. LaBarbara – YES

Case: SYCB160014
Applicant: Margaret Clarke
Location: 7765 Kennedy Lane
Request: Variance

Mr. Holbert presented the case and case history in a Power Point presentation. Mr. Holbert stated the applicant requests a variance to construct a 648 square feet in ground pool on a property that already has a 1,280 square feet detached garage. The maximum square footage for total accessory use structures permitted on the property is 1,225 square feet.

Mr. Holbert showed the aerial view of the existing conditions and the location of the proposed pool.

The Board asked questions of Mr. Holbert.

Mr. Scheve asked how the applicant was able to build the existing garage if it exceeds the permitted square feet.

Mr. Holbert answered it was most likely approved by Hamilton County before Sycamore Township control of local zoning.

Mr. Eichmann asked if the applicant could have the pool if the garage was not on the property.

Mr. Holbert answered in that case the pool would be permitted pool as of right.

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

The applicant, Margee Clarke, of 7765 Kennedy Lane, Cincinnati, OH 45242, addressed the Board. Ms. Clarke noted there is 250 more feet of property behind her garage. She pointed out that the percentage of the rear yard allowed for accessory use is calculated by how wide the lot is noting her lot is narrow but very deep.

Ms. Clarke said she would like to have a pool so she may swim at home instead of at the YMCA. She pointed out that she is very particular about her yard and keeps it up saying it is also very secluded. Ms. Clarke said there are offices, a parking lot, and Moeller high school surrounding her. She stressed that the pool would not take up her whole back yard saying she will still have a lot of green space.

Mr. Eichmann noted this would almost double the permitted area for accessory use structures on the property and could set a precedent.

Ms. Clarke noted her property is unique because of the deep lot. She said she wants a pool for her family and had never thought in her wildest dreams that it would be denied because it is in the ground and would not be seen. Ms. Clarke said the yard would not be congested because she has so much land in the back.

Mr. Scheve asked Mr. Holbert if the calculation takes in to account the size of her yard.

Mr. Holbert answered no saying the code does penalize larger, narrow lots.

Ms. Clarke said the garage was up long before Township control of zoning and was large because they had a motor coach. She said she did not know the rules would change, noting she had lived on the property for forty years and never thought a pool would not be permitted as of right.

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

A member of the public requested to be sworn in.

Mr. Martin Clarke, 8517 Donna Lane, Cincinnati, OH 45236, addressed the Board. He said the property is very nice and asked if it would be possible to have someone do an inspection to view the lot and see how much space would be around the pool.

Mr. Eichmann said Mr. Holbert has already seen the property.

Mr. Clarke said he has seen others in Cincinnati with pools taking up the whole back yard.

Mrs. Clarke said she does have a unique situation because her neighbors' lots are not as long as hers. She said she understands the calculation but reiterated her lot is long and narrow.

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

LaBarbara noted this is an acre lot and asked if she had wider lot if that would that make a difference.

Mr. Holbert answered yes, because the calculation used to determine permitted accessory use is based on frontage.

Mr. Scheve said it would be up to the Trustees to make an exception for narrow lots, noting it is difficult for him to find a hardship in this case.

LaBarbara said it does make sense since it is such a large lot.

Mr. Eichmann entertained a motion.

Mr. Scheve made a motion to deny the variance request for Case SYCB160014.

Mr. Leugers seconded.

Mr. LaBarbara called roll.

Mr. Scheve – YES

Mr. Leugers – YES

Mr. Eichmann – YES

Mr. Heidel – YES

Mr. LaBarbara – YES

Case: SYCB160015 (Withdrawn)
Applicant: Richard Arnold, McGill Smith Punshon
Location: 8527 Owlwoods Lane
Request: Variance

Mr. Eichmann stated that Case SYCB160015 had been withdrawn therefore there would be no action on the case.

Case: SYCB160016
Applicant: Brent Keller
Location: 8936 Montgomery Road
Request: Variance

Mr. Holbert presented the case and case history in a Power Point presentation. Mr. Holbert stated the applicant requests a variance to Table 4-6 to allow for a reduction in the rear yard setback from 35 feet to 16.7 feet. Mr. Holbert pointed out the current house

has about a 32 feet setback. He said the addition would come out about ten feet in front of the house and 15 feet in the rear.

Mr. Holbert pointed out that Glenover Place was approved by Zoning Commission as a PUD and received special approval for the setbacks they have. He said he brought that up because the applicant noted it as an example in his letter.

The Board asked questions of Mr. Holbert.

Mr. Eichmann asked if the rear yard was the only issue. He asked how far an addition could come out in the front.

Mr. Holbert said an addition could come out to the front edge of the house pretty easily.

Mr. Eichmann said the property in question touches five different lots.

Mr. Holbert agreed.

Mr. Eichmann said the only issue is the rear yard setback.

Mr. Holbert concurred noting the existing house is already non-conforming.

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

The applicant, Mr. Brent Keller, of 8936 Montgomery Road, Cincinnati, OH 45236, addressed the Board. Mr. Keller pointed out the location of the existing garage and mentioned other alternatives they had looked into. He said some other options they considered encroach on their next door neighbor. Mr. Keller said going out to the front of the property disrupts the turnaround in the driveway and the landscaping. He noted he had talked to neighbors who had no issues with proposal. He added that going out the front would block the front door and three bay windows.

Mr. Eichmann asked about the tree mentioned in the applicant's letter.

Mr. Keller said constructing the addition part way out the front and part way out the back avoids taking down trees and is the best use of space. He said he likes living there and is trying to make the property work for them and their needs rather than move.

Ms. Heather Keller, of 8936 Montgomery Road, Cincinnati, OH 45236, addressed the Board saying, after viewing other options, the proposal before the Board is the best option for their neighbors and to avoid changing the architectural view of their house.

Mr. Keller pointed out one would still only see a two car garage door from the front.

Mr. Eichmann asked if the applicant had a turnaround in front.

Mr. Keller answered yes.

Mr. Eichmann suggested negotiating another 15 feet of property from the neighbor.

Mr. Keller said he had brought that idea up to his neighbor and they were pretty locked on owning the land even though it is a huge back yard.

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

No response.

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

Mr. Scheve asked what hardship was.

Mr. Eichmann said the property is on Montgomery Road so the applicant cannot park cars on the street.

Mr. Keller asked how the high density Glenover place got their variances.

Mr. Holbert explained that development exceeded density requirements and therefore had to go before Zoning Commission for approval as a PUD.

Mr. Holbert stated if the Board of Zoning Appeals does decide to deny the variance the applicant can appeal the decision to Hamilton County Municipal Court.

Mr. Keller noted living on a four lane, busy road is a hardship.

Mr. Eichmann entertained a motion.

Mr. Scheve made a motion to deny the variance request for Case SYCB160016.

Mr. Leugers seconded.

Mr. LaBarbara called roll.

Mr. Scheve – YES

Mr. Leugers – YES

Mr. Eichmann – YES

Mr. Heidel – YES

Mr. LaBarbara – YES

Case: SYCB160017
Applicant: House of Brows
Location: 7292 Kenwood Road
Request: Appeal

Mr. Holbert presented the case and case history in a Power Point presentation. He said the applicant is appealing the denial of a zoning application for the installation of a 34 square feet building sign. Mr. Holbert noted the applicant had to go through Zoning Commission and the Board of Trustees originally to occupy the space because the property is in the Kenwood SPI Overlay District.

Mr. Holbert reviewed the case history for the property in question. He said the House of Brows was approved with conditions by the Zoning Commission and Board of Trustees and noted the conditions associated with the approval.

Mr. Holbert showed resolution 2013-77 which approved the development noting the Trustees signed it and all voted unanimously to approve it with conditions.

Mr. Holbert showed the application the applicant and owner both signed for the tenant change for the space which included a temporary banner. Mr. Holbert showed a letter from 2013 which gave temporary approval for the applicant to occupy the space

pending compliance with the conditions of the resolution. The conditions were listed in the letter.

Mr. Holbert said the applicant had been notified many times of the conditions and had submitted documents to the Township in which she listed the conditions as well.

Mr. Holbert showed a photo of the temporary sign which was up way too long and finally removed after many notices were sent to the applicant. Mr. Holbert said Township maintenance removed a grand opening banner that was supposed to be temporary because it was in right of way. Mr. Holbert showed the existing free standing sign that has an empty cabinet, as well as billboard in the rear of the property, both of which should be removed per the conditions listed in Resolution 2013-77.

The Board asked questions of Mr. Holbert.

Mr. Scheve asked about the case pending in Hamilton County Common Pleas Court. He asked how the Board of Zoning Appeals could have authority to rule on a case that is scheduled to be tried in common pleas. He also asked how the tenant has the right to apply instead of the owner.

Mr. Butler said the applicant filed an appeal to the Board of Zoning Appeals noting the Board could decide to say they do not have jurisdiction.

Mr. Scheve asked if the issues before the Board of Zoning Appeals are identical to those in the case before common pleas.

Mr. Holbert answered yes.

Mr. Butler said the Board of Zoning Appeals can defer based on the argument that they do not have jurisdiction since the same issues are filed downtown.

Mr. Butler said code says owner or tenant has right to apply or appeal.

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

Ms. Alice Carr, owner of House of Brows, said she is in the middle between the Township and her landlord as the tenant. She noted it says in her lease that she cannot touch the signage in rear and may only do a name change to the front freestanding sign.

Eichmann asked if she had signed the agreement.

Ms. Carr said yes but when she signed she thought the owner would take care of the conditions. She said the owner feels his signs are grandfathered in and he should not have to remove them.

Mr. Scheve asked if there was something Ms. Carr was asking the Board of Zoning Appeals to decide upon that differs from the case before the Hamilton County Court of Common Pleas.

Ms. Carr asked if her temporary sign that was confiscated was taken legally.

Mr. Butler said the Township had the right to remove the sign because it was in the right of way.

Ms. Carr asked for clarification on what the right of way is.

Mr. Holbert explained.

Ms. Carr asked if the monument sign is grandfathered.

Mr. Holbert said no because it had been abandoned for two years.

Ms. Carr said she wanted to use the sign cabinet.

Mr. Holbert explained that she cannot use the sign cabinet because of Exhibit A, the conditions listed in Resolution 2013-77. Mr. Holbert stated the applicant was not permitted to occupy the space until Zoning Commission and the Board of Trustees approved it noting they approved it with the condition that the empty sign cabinet be removed. He noted the applicant then submitted a signed Zoning Compliance Plan which noted those conditions.

Ms. Carr asked if her occupancy of the space was held up because of the Township's disagreement with the owner regarding the signs.

Mr. Holbert answered no saying the approval took a while because drawings were insufficient.

Discussion ensued about what the applicant had to apply for to occupy the space and why.

Mr. Holbert noted this was a use change and because the property is in the Overlay District, the use change must be approved by Zoning Commission and the Board of Trustees. Mr. Holbert noted many other businesses in the Overlay District that had to go through same process.

Ms. Carr asked how long that process usually takes.

Mr. Holbert said typically three months and detailed the process.

Ms. Carr asked if there ever was a signage issue.

Mr. Holbert said he doesn't recall.

Ms. Carr said the Township wanted the signs removed and that's why it was made a condition of the approval.

Mr. Holbert stated the applicant knew that the Township wanted the sign removed.

Ms. Carr said she doesn't want the sign but it is up to the owner to remove it.

Mr. Scheve said again he doesn't see how the Board of Zoning Appeals can get in the middle when there is a case going before a judge in Hamilton County.

Mr. Eichmann agreed the Board has no jurisdiction.

Dr. Paul Sohi, of 7230 Kenwood road, Cincinnati, OH 45236, addressed board saying he is the property owner. He handed out a typed written statement to the Board. Dr. Sohi said he never saw a resolution and many of the items Mr. Holbert has shown this evening.

Dr. Sohi said the sign in the right of way was temporary. Maintenance came and took the sign, creating a huge hardship for the applicant.

Mr. Eichmann asked if Dr. Sohi was saying he was not aware of conditions number one and number two on the approval.

Dr. Sohi said he has no knowledge of the conditions except for the tenant telling him the Township wants the sign removed. He said all the notices were sent to the tenant.

Mr. Scheve asked who the owner listed on the resolution was.

Dr. Sohi said that person is deceased and the Township has sued the wrong person.

Dr. Sohi said the same sign was allowed for Microwines and was used by them for almost five years. The applicant wanted to do the same thing but the Township said she had to take the sign down.

Mr. Scheve said Dr. Sohi does not appear to be the property owner and asked what interest he has in the property.

Mr. Eichmann said the Board would not be able to rule on this issue tonight because there is pending litigation in Hamilton County.

Dr. Sohi said many of the conditions that were imposed are for the owner not the tenant.

Dr. Sohi said this is a new issue because the applicant does not have any sign at all for her business since the sign in the right of way was removed.

Mr. Holbert said the applicant could have a monument sign but doesn't want to because of the expense.

Discussion ensued about whether or not Dr. Sohi is the property owner.

Dr. Sohi stated it is a hardship to run a business without a sign, noting the tenant cannot take down a sign she doesn't own.

Mr. Scheve made a motion to deny the appeal because there is a case pending before Judge Winkler on July 19th.

Mr. Eichmann seconded.

Mr. LaBarbara called roll.

Mr. Scheve – YES

Mr. Leugers – YES

Mr. Eichmann – YES

Mr. Heidel – YES

Mr. LaBarbara – YES

Item 8. – Date of Next Meeting

Mr. Eichmann noted the date of the next meeting – Monday, July 18, 2016.

Item 9. – Communications and Miscellaneous Business

Mr. Holbert reported the consultant is still working on Zoning Resolution and Land Use Plan updates, saying the documents should be completed by the end of the year.

Item 10. – Adjournment

Mr. Eichmann entertained a motion to adjourn.

Mr. Scheve moved to adjourn.

Mr. Heidel seconded.

Vote: All Aye.

The meeting adjourned at 8:37 P.M.

Minutes recorded by: Beth Gunderson, Planning & Zoning Assistant