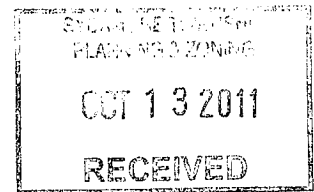


**BOARD OF ZONING APPEALS
SYCAMORE TOWNSHIP, OHIO**



**IN RE: VARIANCE REQUEST
OF D. KRIS BRANDENBURG
AND KIRSTEN BRANDENBURG**

**LETTER OF INTENT FOR APPLICANTS D. KRIS BRANDENBURG AND
KIRSTEN BRANDENBURG**

I. INTRODUCTION

This Letter of Intent is offered in support of the zoning variance application (“Application”) submitted to the Board of Zoning Appeals (“Board”) for the property located at 7260 Garden Rd., Cincinnati, OH 45236 (the “Subject Property”). The lot size of the Subject Property is approximately 49 x 141.60. The variance is sought in response to a notice dated September 28, 2011 from the Sycamore Township Zoning Board. The notice states that a portion of the fence located on the side yard of the Subject Property is not in compliance with Sycamore Zoning Code Section 10-7.1, which requires all fences in side yards to be at least 75% open.

II. PURPOSE OF REQUEST

The variance request is sought in order to preserve a section of privacy fence located on the side yard of the Subject Property. The section of privacy fence was installed in order to provide security and privacy for the Subject Property.

III. FACTUAL BACKGROUND

In April of 2009, D. Kris Brandenburg and Kirsten Brandenburg (the “Applicants”) purchased the Subject Property as their primary residence. As noted above, the Subject Property is located on Garden Rd. Garden Rd. has certain unique

physical conditions which separate it from many residential streets in Sycamore Township. First, Garden is in close proximity to many popular commercial establishments, such as Skyline Chili and LaRosa's. Second, Garden serves as a connection between two major Cincinnati roads: Montgomery Rd. and Galbraith Rd.

The unique physical conditions relative to Garden Rd. create several concerns for its residents, including the Applicants. First, Garden attracts a significant amount of pass through automobile traffic. The nearby commercial establishments draw significant traffic from beyond Garden. In addition, non-resident vehicles frequently travel between Montgomery Rd. and Galbraith Rd. via Garden. Similarly, Garden attracts pass through traffic between neighboring Deer Park and the commercial section of Kenwood. Unfortunately, Applicants have observed many non-resident vehicles travelling Garden in a reckless manner above the posted speed limits.¹

A second concern unique to Garden residents is the presence of significant numbers of door to door solicitors on weekends and during the week. Again, Garden's unique physical conditions likely contribute to the large number of these solicitors. Garden is in close proximity to a major commercial artery in Montgomery Rd., and acts as a connector between Montgomery and Galbraith.

In addition to the unique physical condition of Garden Rd. itself, some homes on Garden, including the Subject Property, have another unique physical condition. Namely, a small handful of homes on Garden have no secondary entrance to the home in the back of the house. The homes on Garden Rd., unlike many homes in Sycamore Township, are cape cods built in roughly the 1950's. While some homes have a side door

¹ Applicants have observed two automobile accidents within close proximity to their residence which were caused by reckless drivers.

that opens to a driveway, a very small handful of homes inexplicably have a side door that does not lead to a driveway.

This unique physical condition has two implications. First, the residents do not have direct access to their back yards via their secondary entrance. Instead, they have to exit a side door and walk along a pathway to the back yard. Second, the secondary access to the home is located much closer to the street, giving potential wrongdoers easier access to the home.

After approximately one year at the Subject Property, the Applicants decided to build a fence (the "Fence"). The decision to install the Fence was largely based on the unique conditions discussed above. Namely, Garden attracts a large volume of high speed, non-local traffic as well as door to door solicitors who walk from house to house. These unique factors led to concerns over the safety of the Subject Property as well as the safety of the Applicants' two small dogs. The purpose of the Fence was three-fold: add protection to the Subject Property; contain the Applicant's pets, and; do so in an aesthetically pleasing manner.

The portion of the Fence at issue in this variance application is the approximately sixteen feet by six feet section that extends from the back yard into a portion of the side yard. This section is in place so that the Fence would enclose the only secondary entrance to the residence, which is on the side of the Subject Property.

IV. APPLICABLE LAW

Pursuant to Chapter 21-1 of the Sycamore Township Zoning Resolution, "[t]he variance procedure is intended to provide a means by which relief may be granted from unforeseen particular applications of this Resolution that create practical difficulties or

particular hardships.” The Zoning Resolution sets forth a wide range of criteria for the Board of Zoning Appeals to consider when presented with a variance request. The factors include whether the request: (i) is no greater than the minimum variation necessary to relieve the unnecessary hardship or practical difficulty demonstrated by the applicant²; (ii) is the result of a unique physical condition³; (iii) is not self created⁴; (iv) would relieve the denial of substantial rights⁵; (v) will not act as a grant of a special privilege⁶; (vi) is in harmony with the Zoning Resolution⁷, and; (vii) will not run contrary to the essential character of the area.⁸

V. DISCUSSION

A. The Variance Is Requested Due to Unique Physical Conditions.

Applicants request this variance as a result of unique physical conditions that exist on their street and in their home. Garden Rd. is situated in close proximity to many commercial establishments and also serves as a connector between two main Cincinnati arteries. These unique physical conditions have led to a large amount of non-local traffic, both on foot and in automobiles. In addition, the Subject Property itself has a unique physical condition in that its secondary entrance is on the side of the house and not in the back.

B. The Unique Physical Conditions Were Not Self-Created.

These unique physical conditions were not self-created by the Applicants. The commercial nature of Montgomery Road exists independent of any action by the

² Sycamore Zoning Resolution 21-6.1

³ Sycamore Zoning Resolution 21-6.2

⁴ Sycamore Zoning Resolution 21-6.3

⁵ Sycamore Zoning Resolution 21-6.4

⁶ Sycamore Zoning Resolution 21-6.5

⁷ Sycamore Zoning Resolution 21-6.6

⁸ Sycamore Zoning Resolution 21-6.7

Applicants. Likewise, the fact that Garden Rd. connects Montgomery Rd. with Galbraith Rd. is outside of Applicants' control. Furthermore, the side door on the Subject Property was created when the home was built decades ago. Applicants did not install the secondary entrance in question.

C. Failure to Grant A Variance Will Result In Hardship And/Or Practical Difficulty For Applicants And Would Deny Substantial Rights.

The unique physical conditions discussed above have created a hardship and/or practical difficulty for Applicants. As noted earlier, Applicants constructed the Fence with three goals in mind: the safety of their home, the safety of their pets and, to make an aesthetically pleasing addition to their home. If Applicants are denied the variance, all three of these important goals cannot be accomplished.

In order to ensure the safety of their home and their pets, Applicants feel that a privacy fence is necessary over other forms of fencing. The Fence is constructed of durable cedar planks, coupled with pressure treated posts and supports. This prevents potential wrongdoers from easily climbing over the fence and accessing the Applicants' back yard and secondary entrance to the home.

Furthermore, the durable nature of the Fence and the small spacing between the planks ensures that Applicants' pets are contained within the yard. Applicants' dogs, a Jack Russell Terrier and a Shetland Sheepdog, are small and most fences do not effectively contain small dogs. Applicants contend that other types of fence such as chain link would be ineffective in this regard.

Finally, as demonstrated by the attached photographs, Applicants made every effort to construct the fence in an aesthetically pleasing manner. Well constructed,

visually appealing additions help maintain favorable property values within Sycamore Township. While there is no way to objectively quantify the aesthetic value of an addition to a home, Applicants argue that the stained cedar fence they have constructed is much more aesthetically pleasing than a chain link alternative.

Furthermore, if Applicants are forced to remove and/or modify the existing portion of the Fence in the side yard, a chicken wire backing or chain link replacement may be the only viable solution. Unfortunately, the chain link or chicken wire alternatives would not match the existing portion of the Fence in the back yard. This would result in a mismatched fence that has little aesthetic value and would diminish the property value of the home and the broader community.

D. The Variance Concerns A Substantial Right And Will Not Act As A Special Privilege.

Through the request of this variance, Applicants are only seeking the same substantial rights afforded to other residents of Sycamore Township. Namely, Applicants seek the same privacy and protection available to residents with a secondary entrance in the back of their home. Applicants seek to enclose their secondary entrance from the significant non-local population that regularly travels their street. Since the zoning ordinance permits this type of privacy and protection for residents with a rear entrance to the home, affording the same opportunity to Applicants would not act as a special privilege. To the contrary, it would only afford Applicants the same privilege afforded to other township residents.

E. The Variance Is The Minimum Necessary To Avoid Hardship Or Practical Difficulty.

Accordingly, Applicants are only seeking the minimum variance necessary to prevent the hardship or practical difficulty at issue. The section of the Fence that is not in compliance only extends from the edge of the back yard to the side door. Applicants do not seek any variance related to other portions of the side yard, only the minimum to ensure privacy and safety for their secondary entrance.

F. The Variance Request Is Consistent With The Zoning Ordinance And Will Not Run Contrary To The Essential Character Of Surrounding Properties.

One of the stated purposes of the Sycamore Township Zoning Ordinance is to: “conserve and protect property and property values.” As discussed in depth earlier, Applicants only seek to protect their property and to do so in a manner that will enhance their property value. Likewise, if the variance is not granted, Applicants will be left with few options for a fence around their secondary entrance. Among these options are to maintain the existing materials, but place an 18 inch gap between fence planks. In order to contain Applicants’ pets, it will be necessary to place chicken wire behind the gaps in the Fence. Alternatively, Applicants could replace the existing section with a 6x6 section of chain link fence. Unfortunately, these options would run contrary to the purpose of the Zoning Ordinance and would harm the value of the Subject Property.

In addition, the existing Fence is not inconsistent with the essential character of the surrounding properties. The neighborhood surrounding the Subject Property is residential in nature, and privacy fences are common. In fact, if not for the side entrance on the Subject Property, the Fence would only surround the back yard, and would be in total compliance with the Zoning Ordinance. Many other properties within the Township have rear entrances and privacy fences that surround the back yard of the property.

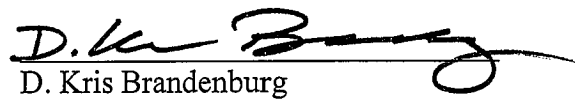
Therefore, the variance would not run against the essential character of the surrounding properties.

V. CONCLUSION

For the reasons stated herein, Applicants respectfully request that the Sycamore Township Board of Zoning Appeals approve a variance for the Fence which sits on the Subject Property.

Dated: October 12, 2011

Respectfully Submitted,


D. Kris Brandenburg