

May 9, 2016

Lyndhurst, Ohio
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The Board of Zoning Appeals of the City of Lyndhurst met in Regular Session on Monday, May 9, 2016 at 7:30 p.m., in the Council Chamber of the Lyndhurst Municipal Center, 5301 Mayfield Road.

Members Present: Lesley Gordon, Chair
David Bader, Kim Colich,
Frank Novak, Russell Warren

Others Present: Ray Schmidlin, Assistant Law Director
John Maichle, Building Commissioner
Clarice J. White, Acting Secretary

It was moved by Mr. Warren, seconded by Mr. Bader that the reading of the minutes of the Regular Meeting held April 11, 2016, copies of which were mailed to all members, be dispensed with and said minutes stand approved as circulated.

The question was put to a voice vote and passed unanimously.

Motion carried.

Mr. Schmidlin gave an overview of proceedings.

Case No. 2016-03

Request of Beth Goldstein of 1721 Richmond Road, for a variance from the provisions of Section 1329.03 of the Building Code. The applicant requests a six (6) foot high stockade fence in the rear yard, in lieu of the required fifty (50) percent open, shadow box fence.

Grounds for Appeal and Section 1329.03 were read by Mr. Bader.

Letters of invitation were sent to all pertinent property owners, a copy of which is made part of the permanent file.

Mr. Maichle stated a letter from the Acacia Courts Homeowners' Association was received.

Mr. Bader read the letter from the Acacia Courts Homeowners' Association aloud, which states that the Association is not opposed to the granting of the variance. The letter is signed by Mary R. Scibana, President.

The following witnesses signed the register and were sworn in by Mr. Schmidlin:

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Beth Goldstein, 1721 Richmond Rd
Sherri Drabek, 5119 Dogwood Tr
Andy Haas, 5109 Dogwood Tr
Traci Girbino, 1708 Harwich
Jim Compton, 5115 Dogwood Tr
Ellen Markell, 1733 Richmond Rd
Mary Scibana, 1769 Richmond Rd

Beth Goldstein, Appellant, 1721 Richmond Road, presented photographs to the Board, and testified that she has lived at this location for a year and a half, and was told by the previous owners that there were dogs in the area. She testified that she feels the previous owners underestimated the amount of dogs and barking in the area. She further testified that whether she is in her kitchen or patio, the dogs can see her and bark nonstop. She then testified that she doesn't have any privacy from the dogs nor the people. She testified that if a fence were erected, the dogs wouldn't see her and therefore, bark less, or deflect the noise back to the owner's house and it would afford her privacy from people as well.

In answer to Ms. Gordon's question, Ms. Goldstein testified that she did consider a shadow box fence, but felt that the openness of that type of fence would not deflect the noise or view into her yard as well as a solid stockade fence. She also testified that she doesn't feel the shadow box fence would allow her the privacy, due to the fact that the dogs would come right up to the fence to peer through, see her and bark.

Ms. Goldstein testified that the color of the proposed fence would match the siding and the material (vinyl) will require minimal maintenance.

In answer to Mr. Warren's question, Ms. Goldstein testified that the proposed fence would run along the common area in the rear of the property only.

Mr. Novak stated that there may be other ways to alleviate the problem. Ms. Colich conferred and stated that there may be other noises that the dogs will react to that will not be blocked by even a solid fence, so the issues may not be completely eliminated.

Ms. Goldstein testified that although it may not alleviate all the noise from the dogs, the proposed fence would help deflect the noise and will enable privacy from neighbors.

Mr. Novak stated that a six (6) foot high board on board, fifty (50) percent open fence is allowed, and no variance would be needed.

Sherri Drabek, 5119 Dogwood Trail, testified that she attended this meeting for further information, and to voice her objection to the granting of the variance. She then testified that she has a dog, but it is not out all day because she works full time; when the dog is out, she is out with it.

Andy Haas, 5109 Dogwood Trail, testified that he feels barking dogs do not necessitate a fence being erected, as there are other options. He further testified that erecting a fence would

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hinder the beautiful view for many of the neighbors. He also stated there are other solutions to the problem and other ways to obtain privacy.

Traci Girbino, 1708 Harwich Road, testified that she lives directly behind the appellant, and has two (2) dogs. She then testified that she has lived there twenty-two (22) years and has not, until now had a complaint about her dogs. She then testified that her dogs are never left in the yard to bark uncontrollably. She also testified that if the proposed fence were to be erected, it would extend only halfway across her rear yard (not on her property), which she feels would be an eyesore.

Jim Compton, 5115 Dogwood Trail, testified that he has lived in this house for four (4) years and does not consider the dogs a problem. He further testified that he is opposed to the granting of the variance, and suggested that a fence be erected around the appellant's patio for privacy.

Ellen Markell, 1733 Richmond Road, testified that she also lives behind the appellant, and is opposed to the granting of the variance due to it blocking the view, and the openness of the area. She also testified that she has never had a problem with the dogs. She then testified that she is part of the homeowners' association, and is bound by what agreements it made, however, she is opposed to the approval that the homeowners' association sent to the board, approving the proposed fence.

Mary Scibana, 1769 Richmond Road, President of the Acacia Court Homeowners' Association, testified that the Association did in fact request the acceptance of a solid fence. She then asked about the solid fence between the Crossroads shopping center and the homes that abut the shopping center. In answer to Mr. Schmidlin's question, Ms. Scibana testified that she is not against the granting of the variance.

Mr. Warren explained that a solid fence is allowed when separating two different zoning districts.

Ms. Goldstein, appellant, testified that she doesn't feel the proposed fence will be visible to many of the property owners. She then testified that a fence will be erected, with or without the Board's approval.

Jim Compton asked where exactly the fence would be erected. He further testified that he moved to this location due to the open space.

Ms. Gordon questioned where the homeowners' properties end and the common area begins. She further stated that the placement of the fence would begin and end partially in someone's rear common area, which would look odd. She further stated her concern in regards to different types of fences (fifty (50) percent open or solid with approval) creating a buffer in that area.

Mr. Warren reiterated that a fence can be erected around the patio area for privacy.

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Mr. Bader suggested erecting the allowed fifty (50) percent open six (6) foot high fence but adding shrubbery or other natural landscaping in front of the fence for additional privacy.

FINDINGS

The Board finds that:

1. The requested variance is not the minimum variance that would allow the reasonable use of the land.
2. There were five (5) objections from property owners.
3. There was one property owner that did not object to the variance being granted.
4. There is no unique physical characteristic of the property, other than it is a common area development with zero property lines.
5. A literal interpretation of the ordinance would not deprive the property owner of rights enjoyed by other property owners. There are other options available.
6. The fence section of the Building Code was updated in February, 2016.
7. The request for the solid fence was approved by the Acacia Courts Homeowners' Association.

It was moved by Ms. Colich, seconded by Ms. Gordon that recommendation be made to Council to confirm the decision of the Board to deny requested variance based on the above findings.

Roll Call: Yeas: Gordon, Bader, Colich, Novak, Warren
Nays: None.

Motion carried.

It was moved by Ms. Colich, seconded by Mr. Bader that the meeting be adjourned.

The question was put to a voice vote and passed unanimously.

Motion carried, meeting
adjourned at 8:25 p.m.

Approved: _____

Attest: _____