

BOARD OF ZONING APPEALS

MEETING MINUTES

MAY 24, 2012

AGENDA

PREVIOUSLY TABLED CASE:

- 1. Trinity Park – Nemeth Residence – Rear Yard Setback Variance
12-025V (Approved 4 – 0) 5704 Sandymount Drive
Non-Use (Area) Variance**

Chair Brett Page called the meeting to order at 6:30 p.m. Other Board members present were James Zitesman, Patrick Todoran, and Kathy Ferguson. Brian Gunnoe was absent. City representatives present were Rachel Ray, Tammy Noble-Flading, Tori Proehl, Winfield Harris, and Flora Rogers.

Motion and Vote

Brett Page made a motion, seconded by James Zitesman, to accept the documents into the record. The vote was as follows: Ms. Ferguson, yes; Mr. Todoran, yes; Mr. Zitesman, yes; and Mr. Page, yes. (Approved 4 – 0.)

Motion and Vote

Kathy Ferguson made a motion, seconded by Patrick Todoran, to approve the April 26, 2012 meeting minutes as presented. The vote was as follows: Mr. Page, yes; Mr. Zitesman, yes; Mr. Todoran, yes; and Ms. Ferguson, yes. (Approved 4 – 0.)

Administrative Business & Communications

Rachel Ray introduced Winfield Harris, a new Planning Assistant. She said he was an undergraduate student from the University of Cincinnati participating in a cooperative program until June. She reminded the Board members that the Muirfield Memorial Tournament would be held next week.

Mr. Page commented that Mr. Harris should enjoy his learning experience while with the City of Dublin.

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Brett Page swore in those who wished to address the Board regarding this rear yard setback non-use (area) variance request, including Ted Nemeth, 204 Park Boulevard, Worthington, representing the applicants, Julius and Mary Nemeth, and City representatives.

Tori Proehl presented this non-use (area) variance application which was tabled at the April Board of Zoning Appeals meeting. She explained that the applicant has since reconfigured the proposed fence to no longer require a side yard setback variance and reduced the proposed rear yard setback from 30 feet to 15 feet. She presented photographs of the residence and the surrounding area. She said that the approved development text requires a 30-foot rear setback and six-foot side yard setbacks. She presented a plan showing the proposed fence connecting to the corners of the house, encroaching 15 feet into the required 30-foot rear yard setback. She said in addition to the required setbacks there are

several easements on the parcel. Ms. Proehl said that the applicants have worked to ensure that the reconfiguration of the fence does not encroach into the easements or encroach into the required side yard. She said if this variance is approved, a Certificate of Zoning Plan Approval is required before the fence may be constructed.

Ms. Proehl said that the review standards for non-use (area) variances require that the first three findings are made, and it was Planning's opinion that they have all been met. She said while there are limited conditions on this particular parcel that may be considered special circumstances, the first standard also allows the Board to consider conditions on the adjacent parcels in making their determination. Ms. Proehl explained that the proposed location of the fence allows the property owner to fence in a useable portion of the rear yard while leaving enough open area to adequately maintain the remainder of the yard and vegetation. She said regarding the second standard, the limited buildable area is the result of requirements set forth for the subdivision in the development text and the plat and is not a result of the action or inaction on the applicant's part. Ms. Proehl said with respect to the third standard, the purpose of the setback regulation is to preserve visual corridors free from obstructions. She said that constructing the proposed fence partially within the rear yard setback would not further impair the intent and purpose of the regulation due to the existing fences on adjacent lots and the significant vegetation.

Ms. Proehl said that the review standards for non-use (area) variances require that at least two of the four findings listed are made by the Board, and it is Planning's opinion that two standards have been met. She said the "recurrent nature" standard has been met. She said this request is not one common enough to warrant a general code modification in lieu of a variance. Ms. Proehl explained that with regard to the "special privileges" standard, the standard has not been met, because the lot is sized similarly to other lots in the subdivision and the same buildable area limitations apply to the other lots and therefore granting this variance would confer special privileges on this property. She said that the "delivery of governmental services" standard also has been met. She explained that allowing the fence to be located within the rear yard setback would not interfere with the delivery of governmental services because the proposed location will be clear of the storm water drainage easements along the rear property line. Ms. Proehl said the "other method available" standard has not been met. She explained that the applicant's desire for privacy will be maintained with or without the construction of the fence and other options for confining the applicant's dog could be explored such as an invisible fence.

Ms. Proehl said that Planning recommends approval of a variance of 15-feet to the rear yard setback requirements.

James Zitesman asked about the fence material.

Ted Nemeth, 204 Park Boulevard, Worthington, representing the applicants, Julius and Mary Nemeth, said that the fence would be constructed with cedar fence boards. He said that they had tried an invisible fence to contain his father's companion dog, but because his father uses a wheelchair, he is unable to move quickly enough through the door. He explained that the proposed fence will help keep the dog from wandering away from his father's yard.

Motion and Vote

James Zitesman made a motion, seconded by Patrick Todoran, to approve this non-use (area) variance request to allow a fence to be constructed 15 feet within the required rear yard setback, because it meets all of the required non-use (area) variance standards. The vote was as follows: Mr. Page, yes; Ms. Ferguson, yes; Mr. Todoran, yes; and Mr. Zitesman, yes. (Approved 4 – 0.)

Mr. Page announced that the next Board meeting would be held on June 28th. He adjourned the meeting at 6:42 p.m.

As approved by the Board of Zoning Appeals on June 28, 2012.