



City of Dublin Board of Zoning Appeals

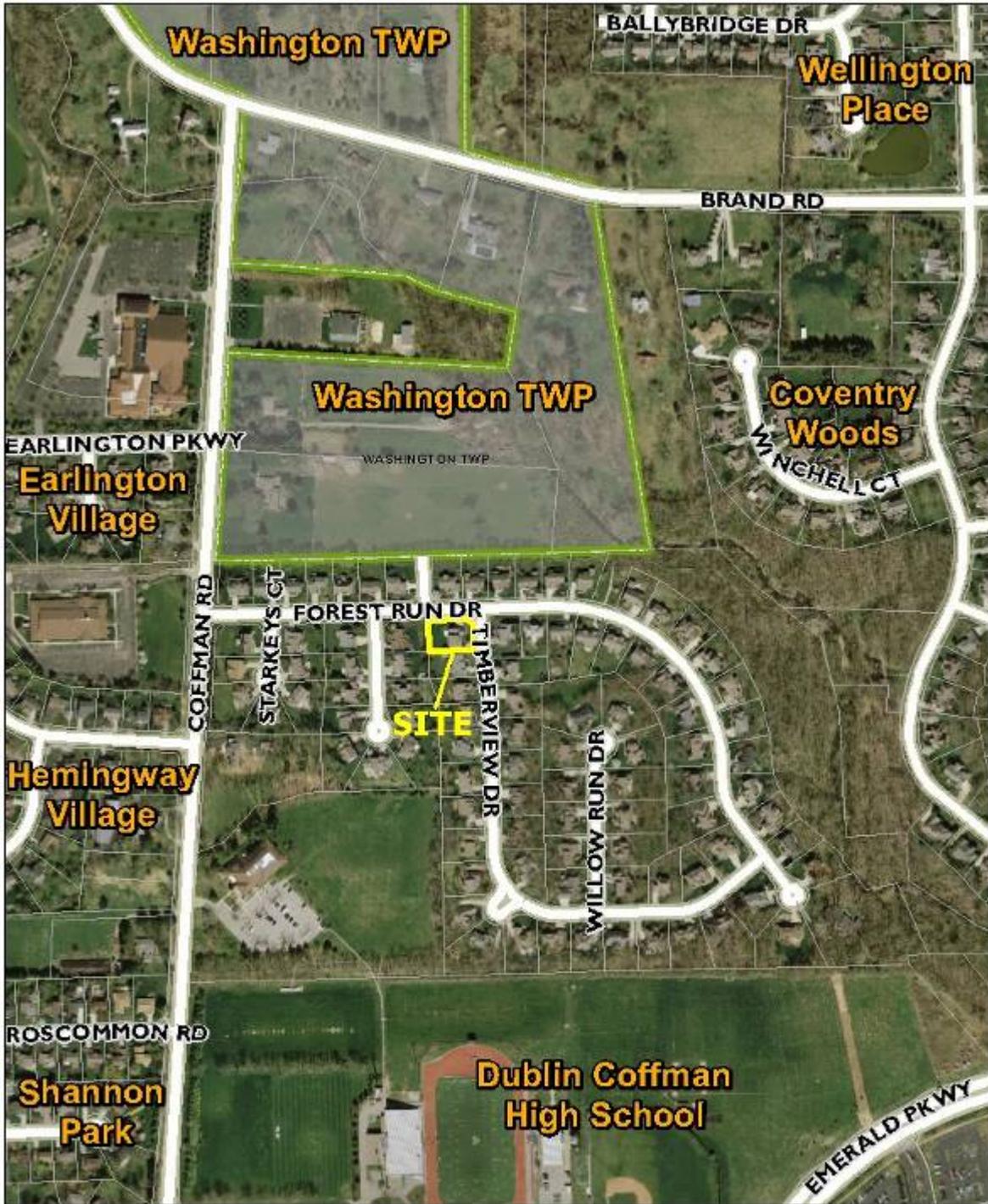
# Planning Report

Thursday, May 23, 2013

## Buckley Residence – 7153 Timberview Drive Side and Rear Yard Setbacks

### Case Summary

|                         |   |
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| Agenda Number           | 1   |
| Case Number             | 13-043V   |
| Location                | 7153 Timberview Drive<br>The site is 0.30-acres on the west side of Timberview Drive, at the southwest corner with Forest Run Drive.  |
| Proposal                | To install a fence into the required side and rear yard setback by 1 foot and 20 feet, respectively, for an existing residence within the Woods of Indian Run PUD.  |
| Request                 | Non-Use (Area) Variances<br>To permit a fence to be located within the side and rear yard setbacks which requires review and approval by the Board of Zoning Appeals based on the review criteria of Zoning Code Section 153.231. |
| Applicants              | John and Patricia Buckley, Property Owners.   |
| Planning Contact        | Tammy Noble-Flading, Senior Planner.  |
| Contact Information     | (614) 410-4649; tflading@dublin.oh.us   |
| Planning Recommendation | <b>Disapproval: Variance for Side and Rear Yard Setbacks</b><br>Variance from Section 153.080(B)(2) to allow a fence to be located within the rear and side yard setback.   |



13-043V  
Non-Use (Area) Variance  
Buckley Residence  
7153 Timberview Dr.

0 150 300  
Feet

| Facts                       |   |
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| Site Description            | <ul style="list-style-type: none"> <li>• 0.30-acre site.</li> <li>• Frontage: Forest Run Drive - 130 feet; Timberview Drive - 90 feet.</li> <li>• Required Front Setbacks: 25 feet on Forest Run Drive and Timberview Drive.</li> <li>• Lot depth - 135 feet (average).</li> <li>• Easements: North and east - 20 feet; South and west - 5 feet.</li> <li>• Driveway on Forest Run Drive.</li> </ul>  |
| Zoning                      | PUD District, Planned Unit Development within Woods of Indian Run   |
| Surrounding Zoning and Uses | The site is surrounded by single-family homes zoned PUD, Planned Unit Development. Lots within this PUD are similarly sized and contain primarily one-and-a-half to two-story ranch homes.  |
| Site Features               | <ul style="list-style-type: none"> <li>• A two-story house is located in the center of the site.</li> <li>• A large tree is located near the northern property line.</li> <li>• The site has several mature trees and shrubs in the front and side yards of the property. The rear yard is primarily lawn.</li> <li>• The applicant is in the process of renovating the interior and exterior of the home, including the addition of a patio.</li> </ul>  |
| Proposal                    | <p>The applicant is proposing to install a wooden, split-rail fence within the side and rear yard setbacks. Side yard: Proposed 5 feet from the south property line where 6 feet is required (1 foot variance). Rear yard: Proposed 5 feet from the west property line where 25 feet is required (20 foot variance). The proposal meets the setback requirements for the north and east side of the property.</p> <div style="display: flex; align-items: center;"> <div style="flex: 1; padding-right: 20px;"> <p><i>Variances to side and rear yard</i></p> </div> <div style="flex: 2;"> </div> </div> |
| Details                     |   |
|                             | <b>Rear Yard Variances</b>  |
| Process                     | Zoning Code Section 153.231(C)(3) allows the Board of Zoning Appeals to approve requests for non-use (area) variances only in cases where the Board finds that there is evidence of a practical difficulty present on the property, limiting conformance to the strict requirements of the Zoning Code. The Board shall make a finding that the required review   |

| Details          |  | Rear Yard Variances |
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|                  | standards have been appropriately satisfied (refer to the last page of this report for the full wording of the review standards).  |                     |
| Variance Request | <p>Since an update in 2000, Section 153.080(B)(1)(a) of the Zoning Code requires fences to be located within the buildable area of a lot. The Planned Unit Development, Woods of Indian Run requires a minimum side yard of 6 feet and a total side yard of 14 feet. The applicant is proposing to install a fence one foot into this minimum side yard requirement. The required rear yard setback is a minimum 25 feet. The applicant is proposing to install a fence 20 feet into the required rear yard setback.</p> <p>As many of the lots within this area of Dublin were developed prior to these regulations, a number of the lots in the area have fences on or near the property line. However, lots immediately adjacent to the applicant's site are open and unobstructed by fences.</p> |                     |

| Analysis  |  | Side/Rear Yard Setbacks |
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| Variance Request  | The variance request, if approved, would permit the proposed fence to be located on the property in the side and rear yard setbacks, where the Code prohibits a fence within the required setbacks.  |                         |
| <b>ALL THREE OF THE FOLLOWING STANDARDS MUST BE MET</b> |  |                         |
| (1) <i>Special Conditions</i>                           | <p><b>Standard is Not Met</b></p> <p>While there are some fences in the area that are placed on the property line, this is not a prevalent condition throughout the PUD, Woods of Indian Run. Any new fence constructed in this subdivision is required to be within the setbacks of the lot. Furthermore, there are no natural features, grade changes, vegetation, etc. or other site features that would prevent compliance. The applicant has stated that one of the special conditions of the site is the location on a corner lot. It has been made clear by the BZA in past applications that corner lots are a common condition in the city and are typical in a suburban style neighborhood are therefore are not considered as meeting the qualifications for this standard.</p> |                         |
| (2) <i>Applicant Action/Inaction</i>                    | <p><b>Standard Met.</b></p> <p>The conditions present on this lot and in the neighborhood have been present for an extended time; therefore, no affirmative action has been taken by the applicant to create the need for the variance.</p>  |                         |

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| <b>Analysis</b> | <b>Side/Rear Yard Setbacks</b> |
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| <p>(3) <i>No Substantial Adverse Effect</i></p> | <p><b>Standard Not Met.</b><br/>                 City Council has expressed an interest in fence locations, particularly with respect to the intent of providing as much open area as possible, especially with respect to constructed fences. This standard also addresses the need to preserve the purpose and intent of the regulation. Continuing to permit fences on all property lines only because neighboring properties have the same condition will not permit the eventual achievement of the purpose and intent of this regulation.</p> |
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| <b><i>AT LEAST TWO OF THE FOLLOWING FOUR STANDARDS MUST BE MET</i></b> |
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| <p>(1) <i>Special Privileges</i></p> <p>(2) <i>Recurrent in Nature</i></p> <p>(3) <i>Delivery of Governmental Services</i></p> <p>(4) <i>Other Method Available</i></p> | <p><b>No Standards Met.</b> The following standards have been reviewed with the finding that none of the Standards have been satisfied.</p> <p>(1) <b>Standard Not Met.</b><br/>                 Providing the fence in the required location would still provide an adequate area for privacy and enjoyment of the use of the lot's yard areas. Allowing this fence location absent any special conditions or circumstances would grant this applicant a fence location not permitted by other properties in the same zoning district or neighborhood.</p> <p>(2) <b>Standard Not Met.</b><br/>                 With City Council's emphasis on fence locations, continued approvals of fences on or near property lines resulting from variances could have the effect of altering Code requirements in certain areas, which, if continued, would lead to a conclusion that a Code amendment would be preferable to a succession of similar variances.</p> <p>(3) <b>Standard Not Met.</b><br/>                 Another useful purpose of having fences not completely enclose yard areas is to permit adequate safety services, including fire access.</p> <p>(4) <b>Standard Not Met.</b><br/>                 The fence could be located in the required location and still provide an adequate area for privacy and enjoyment of the use of the lot's yard areas.</p> |
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| <b>Recommendations</b> | <b>Disapproval</b> |
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| <p><b>Disapproval</b></p> | <p>Based on Planning's analysis the requested variance does not meet the required non-use (area) variance standards, therefore disapproval of a variance from Section 153.080(B)(2) to allow a fence to be located within the side and rear yard setback is recommended.</p> |
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## NON-USE (AREA) VARIANCES

### Section 153.231(H)(1) Variance Procedures

On a particular property, extraordinary circumstances may exist making a strict enforcement of the applicable development requirements of this Code unreasonable and, therefore, the variance procedure is provided to allow the flexibility necessary to adapt to changed or unusual conditions that meet the standards of review for variances. In granting any variance, the Board of Zoning Appeals shall prescribe appropriate conditions and safeguards to maintain the intent and spirit of the zoning district in conformity with the Zoning Code.

*Non-Use (Area) Variances.* Upon application, the Board of Zoning Appeals shall only approve a request for a non-use variance only in cases where there is evidence of practical difficulty present on the property in the official record of the hearing, and that the findings required in (a) and (b) have been satisfied with respect to the required standards of review (refer to the last page of this Report for the full wording of the review standards):

**(a) That all of the following three findings are made:**

- (1) That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same zoning district whereby the literal enforcement of the requirements of this Chapter would involve practical difficulties. Special conditions or circumstances may include: exceptional narrowness, shallowness or shape of a specific property on the effective date of this Chapter or amendment; or by reason of exceptional topographic or environmental conditions or other extraordinary situation on the land, building or structure; or by reason of the use or development of the property immediately adjoining the property in question.*
- (2) That the variance is not necessitated because of any action or inaction of the applicant.*
- (3) Granting the variance will not cause a substantial adverse effect to property or improvements in the vicinity or will not materially impair the intent and purposes of the requirement being varied or of this Chapter.*

**(b) That at least two of the following four findings are made:**

- (1) That a literal interpretation of the provisions of the Zoning Code would not confer on the applicant any special privilege or deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Chapter.*
- (2) The variance request is not one where the specific conditions pertaining to the property are so general or recurrent in nature as to make the formulation of a general regulation for those conditions reasonably practicable.*
- (3) The variance would not adversely affect the delivery of governmental services (e.g., water, sewer, garbage).*
- (4) The practical difficulty could be eliminated by some other method, even if the solution is less convenient or most costly to achieve.*