City of Dublin
Land Use and
Long Range Planning
5800 Shier-Rings Road
Dublin, Ohio 43016-1236

Phone/ TDD: 614-410-4600
Fax: 614-410-4747
Web Site: www.dublin.oh.us

City of Dublin Board of Zoning Appeals

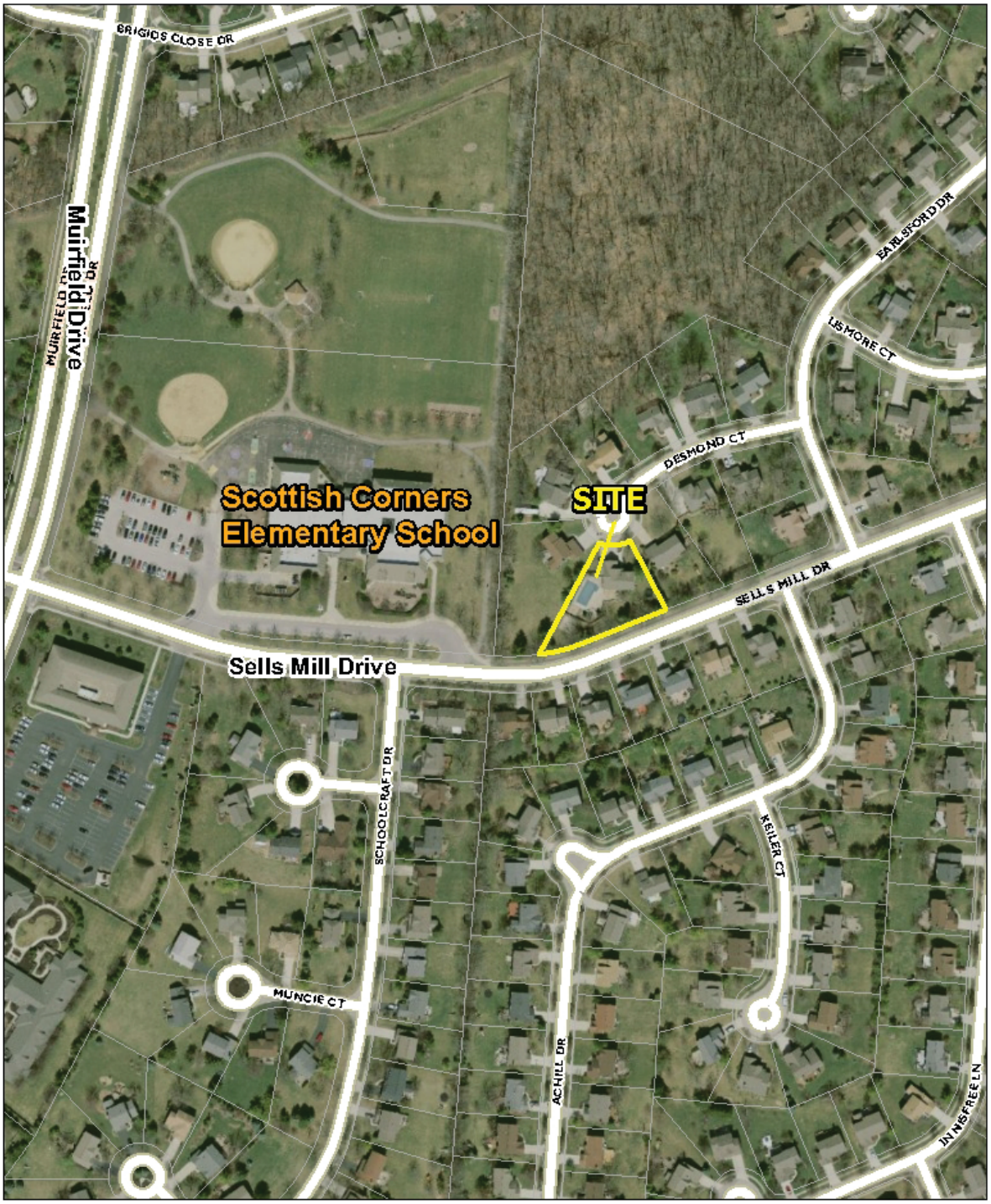
Planning Report

Thursday, May 22, 2014

Jones Residence-Desmond Court

Case Summary

Agenda Number	1
Case Number	14-042V
Location	5735 Desmond Court South side of Desmond Court approximately 310 feet west of the intersection with Earlsford Drive.
Proposal	To construct a fence that encroaches 18 feet, six inches into the rear yard setback and five feet into the side yard setback. The applicant is also request a variance to construct a fence into a recorded easement.
Request	Non-use (area) variance to Sections 153.080(A) and (B) to permit a fence that encroaches into the side and rear yard setbacks and a recorded easement. Requires review and approval by the Board of Zoning Appeals based on the review criteria of Zoning Code Section 153.231.
Applicants	Doug Jones and Staci Perkins, owners.
Planners:	Tammy Noble-Flading, Senior Planner.
Planning Contact:	(614) 410-4649 or tflading@dublin.oh.us
Planning Recommendation	**Disapproval of a Variance to the Side and Rear Yard Setback. Disapproval of a Variance to a Platted Easement.** Based on Planning's analysis, the request does not meet the review criteria for a non-use (area) variance and recommends disapproval for a fence that extends in a side and rear yard setback and a recorded easement.



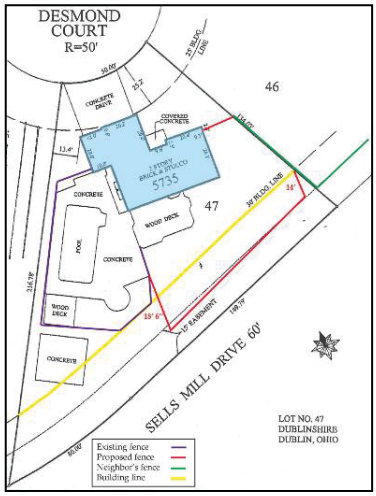
City of Dublin

14-042V
Variance
Jones Residence
5735 Desmond Court

0 100 200
Feet

Facts	
Site Description	The 0.467 acre site has a single-family home, a pool surrounded by a six-foot privacy fence, two decks and a concrete basketball court. The pie-shaped, cul-de-sac lot has 50 feet of frontage on Desmond Court and abuts Sells Mill Drive at the rear. Other attributes of the site include a 15-foot easement, to the rear of the property, and a walking path that connects to the Scottish Corners Elementary School.
Zoning	PUD, Planned Unit Development; Dublinshire subdivision.
Surrounding Zoning and Uses	The site is surrounded by residential development, zoned PUD, Planned Unit Development, Dublinshire subdivision.
Proposal	The applicant is proposing to construct a four-foot, split-rail fence that will extend from an existing six-foot privacy fence in the west portion of the property to an existing fence of the adjacent property owner to the east. The fence will encroach into the side and rear yard setbacks, as well as a recorded easement.

Details	**Setback Variances and Platted Easement**
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 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 standards have been appropriately satisfied (refer to the last page of this report for the full wording of the review standards).
Variance Request	Section 153.080(B)(1)(a) of the City of Dublin Zoning Code requires that open fences shall be not greater than four feet in height and located only within the buildable area of the lot (meet all setback requirements). The request is also for a variance from Section 153.080(A)(1) to allow a fence that would be constructed three feet, six inches into a recorded easement. The applicant is requesting to allow a four-foot split rail fence to be placed within the side and rear yard setbacks. The fence will extend 18 feet, 6 inches into the rear yard setback at the southwest portion of the rear yard, and



Details	**Setback Variances and Platted Easement**
	14 feet into the rear yard setback at the southeast portion of the property. The variance would also permit the fence on the side property line, for a variance of five feet into the side yard setback. The applicant is also requesting a variance to allow the fence to extend three feet, six inches into a recorded easement. Setbacks are created to allow open view shed and natural areas of separation, between buildings. Easements are areas that are designated for utilities, private or public, and are meant to be unrestricted by construction. This is to prevent disruption of utility lines and allow unrestricted areas if maintaining the utility lines is necessary. The applicant would like to maximize the area of the yard that is enclosed with the fence, and allowing the fence to connect to the neighbor's fence to the east, to lower the cost of the fence construction. The neighbor's fence was constructed prior to the current fence regulations and is non-conforming.

Analysis	**Setback Variances and Platted Easement**
ALL THREE OF THE FOLLOWING STANDARDS MUST BE MET	
(1) Special Conditions	**Standard Not Met.** The applicant's request is based primarily on maximizing the area of the yard enclosed by a fence, minimizing cost of the fence construction, and maintaining resale value of the property. These conditions present on this site are commonly occurring and lack the special conditions, such as shape, topography, or natural features that would make it impractical to meet the regulations.
(2) Applicant Action/Inaction	**Standard Met.** The lot was created and the adjoining fence already constructed. Therefore, the applicant took no action to create any condition that dictated the need for the variance.
(3) No Substantial Adverse Effect/ Hinder Intent of Regulation	**Standard Not Met.** The purpose of this fence regulation is to prevent perimeter fences along side and rear property lines that "close off" properties from adjacent properties. It is also intended to create and maintain open corridors of viewsheds unrestricted by buildings or fences. At some point the neighboring fence will be required to come into compliance with the Code should it cease to be maintained. The applicant's request will materially impair the intent of this regulation by entirely enclosing the rear and sides of the property.
AT LEAST TWO OF THE FOLLOWING FOUR STANDARDS MUST BE MET	

Analysis	**Setback Variances and Platted Easement**
	The following standards have been reviewed with the finding that one standard is met.
(1) Special Privileges	**Standard Not Met.** The Board has reviewed similar requests that are common in older, residential areas. Normally, the Board has denied the other applications. If the Board were to approve the applicant's request, it would afford the applicant a special privilege that has not been provided to other property owners with similar conditions. The applicant is still able to construct a substantial fence to enclose a large portion of the yard.
(2) Recurrent in Nature	**Standard Not Met.** The Board has reviewed no more than one or two similar requests a year. This number of variance requests is not exorbitant and does not constitute a recurring issue that would be better resolved through a Code amendment. In fact, as noted above, the regulation was written to prevent what the applicant is requesting.
(3) Delivery of Governmental Services	**Standard Met.** The request would not impact the delivery of governmental services.
(4) Other Method Available	**Standard Not Met.** The applicant would be able to construct a fence that meets applicable zoning regulations and still have a large yard, located within a permitted fenced area. This would be a viable option for the applicant and therefore.

Recommendation	**Disapproval**
Disapproval	Based on Planning's analysis, the request does not meet the review criteria for a non-use (area) variance and recommends disapproval for a fence that extends in a side and rear yard setback and a platted easement.

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 <u>all</u> 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 <u>two</u> 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.