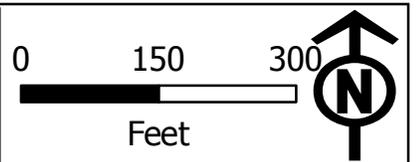


15-107V
 Non-Use Variance
 Earl Residence
 5735 Desmond Court





City of Dublin

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

Phone 614.410.4600
fax 614.410.4747
www.dublinohiousa.gov

BOARD OF ZONING APPEALS

BOARD ORDER

MAY 22, 2014

The Board of Zoning Appeals took the following action at this meeting:

1. Dublinshire PUD - Jones Residence 14-042V 5735 Desmond Court Variance

Proposal: This is a request to construct a 4-foot privacy fence that will be located in the required side and rear yard setbacks and located within a recorded easement. The site is zoned PUD, Planned Unit Development within the Dublinshire subdivision located on the south side of Desmond Court, 310 feet west of the intersection with Earlsford Drive.

Request: Review and approval of a variance application in accordance with Zoning Code Section 153.231.

Applicant: Douglas Jones and Staci Perkins, Owners.

Planning Contact: Tammy Noble-Flading, Senior Planning

Contact Information: (614) 410-4649, tflading@dublin.oh.us

MOTION #1: Mr. Gunnoe made a motion, seconded by Mr. Zitesman, to disapprove this variance to Zoning Code Section 153.231 to allow a 4-foot privacy fence to be located 18 feet 6 inches into the required rear yard and 5 feet into the required side yard setbacks because it does not meet all the required variance standards and review criteria.

VOTE: 3 - 1.

RESULT: This Variance application was disapproved.

RECORDED VOTES:

Patrick Todoran	No
Brett Page	Absent
Brian Gunnoe	Yes
James Zitesman	Yes
Rion Myers	Yes

MOTION #2: Mr. Gunnoe made a motion, seconded by Mr. Zitesman, to disapprove this variance to Zoning Code Section 153.231 to allow a 4-foot privacy fence to be located within the recorded easement because it does not meet all the required variance standards and review criteria.

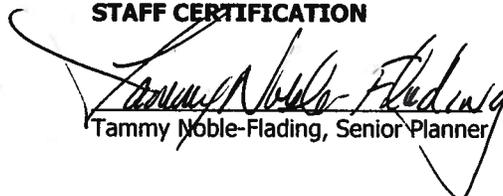
VOTE: 3 - 1.

RESULT: This Variance application was disapproved.

RECORDED VOTES:

Patrick Todoran	No
Brett Page	Absent
Brian Gunnoe	Yes
James Zitesman	Yes
Rion Myers	Yes

STAFF CERTIFICATION



Tammy Noble-Flading, Senior Planner



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BOARD OF ZONING APPEALS

BOARD ORDER

MAY 22, 2014

The Board of Zoning Appeals took the following action at this meeting:

MOTION: Mr. Gunnoe made a motion, seconded by Mr. Myers, to accept the documents into the record.

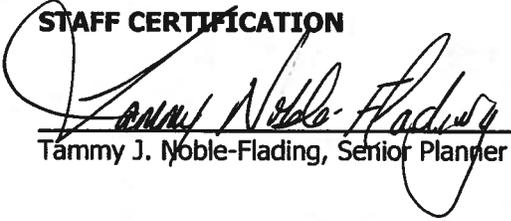
VOTE: 4 – 0.

RESULT: The documents were accepted into the record.

RECORDED VOTES:

Patrick Todoran	Yes
Brett Page	Absent
Brian Gunnoe	Yes
James Zitesman	Yes
Rion Myers	Yes

STAFF CERTIFICATION


Tammy J. Noble-Flading, Senior Planner

BOARD OF ZONING APPEALS

MEETING MINUTES

MAY 22, 2014

AGENDA

NEW CASE:

**1. Dublinshire PUD - Jones Residence
14-042V**

**5735 Desmond Court
Variance**

Vice Chair Brian Gunnoe called the meeting to order at 6:32 p.m. Other Board members present were Rion Myers, Patrick Todoran, and James Zitesman. City representatives present were Tammy Noble-Flading, Katie Ashbaugh, and Laurie Wright.

Motion and Vote

Mr. Gunnoe moved, Mr. Myers seconded, to accept the documents into the record. The vote was as follows: Mr. Todoran, yes; Mr. Zitesman, yes; Mr. Myers, yes; and Mr. Gunnoe, yes. (Approved 4 – 0)

Motion and Vote

Mr. Zitesman moved, Mr. Myers seconded, to approve the April 24, 2014 meeting minutes as presented. The vote was as follows: Mr. Gunnoe, yes; Mr. Todoran, yes; Mr. Myers, yes; and Mr. Zitesman, yes. (Approved 4 – 0)

Communications

Tammy Noble-Flading introduced a new planning assistant, Katie Ashbaugh.

Administrative Business

Mr. Gunnoe swore in those who intended to address the Board in regards to any of the cases on this Agenda.

**1. Dublinshire PUD - Jones Residence
14-042V**

**5735 Desmond Court
Variance**

Tammy Noble-Flading presented this variance request for a 4-foot privacy fence that will be located in the required side and rear yard setbacks and located within a recorded easement. She stated that the site zoned PUD, Planned Unit Development within the Dublinshire subdivision. The site is located on the south side of Desmond Court, 310 feet west of the intersection with Earlsford Drive.

Ms. Noble-Flading said the site is approximately a half-of-an-acre located within a Planned Unit Development called the Dublinshire subdivision that is located east of the Scottish Corners Elementary School. She presented the pie-shaped, cul-de-sac lot with 50 feet of frontage on Desmond Court that is the front of the property and backs up to Sells Mill Drive at the rear. She said the existing site contains a single-family home and an in-ground pool. She said there is a privacy fence that surrounds the pool. She stated that the site also contains two decks and a basketball court.

Ms. Noble-Flading said the applicant is proposing to construct a four-foot, split-rail fence that will extend from a six-foot privacy fence associated with the pool to a neighbor's fence located to the east. She noted the fence will encroach into the side and rear yard setbacks, as well as a recorded 15-foot easement, hence the request for a three variances associated with those setbacks. She said the applicant would encroach 18 feet 6 inches

into the rear setback at the furthest point. She explained the side yard has a five-foot setback and the applicant is requesting a zero setback. She explained there is a small part of the fence that extend three and a half feet into a utility easement.

Ms. Noble-Flading presented some photographs to show the different views from the yard. She noted the neighbor's fence was built prior to the current fence regulations and is non-conforming. She shared an illustration from the applicant that showed where the proposed line would be if they met the regulations opposed to the proposal.

Ms. Noble-Flading presented the review criteria to the Board, as well as Planning's analysis. She stated that based on this analysis, Planning is recommending disapproval for the application.

Mr. Gunnoe asked if the Board members had any questions.

James Zitesman asked that Ms. Noble-Flading describe the proposed fence. She responded stating that it is a split-rail fence.

Mr. Gunnoe said if there were no other questions for staff, he invited the applicant to come forward and make any comments.

Doug Jones, 5735 Desmond Court, said there were two factors for this proposal: 1) for convenience as they have a small dog that they would like to let run free in the yard and the yard backs up to the bike path that leads to Scottish Corners Elementary School; and 2) for safety as they have a trampoline in their backyard and due to the close proximity to the school and bike path, neighborhood kids will use the trampoline when they are not home.

Mr. Jones presented the slides that show three pre-existing fences along their street. He indicated that two of those are four-foot privacy fences that he believes existed prior to 2000 and the third example was a split rail fence similar to his proposal. He showed a view of his backyard that shows a lot of landscaping between his yard and the bike path and stated the fence would not be visible. He showed a view of his side yard and stated if they did build per Code, allowing for a five-foot setback, there would be a four and a half foot section of grass running down through the backyard between his fence and the neighbor's, which would not be aesthetically pleasing.

Mr. Jones showed illustrations of what he was proposing including a line that represented the required setback and a line that represented his proposal. He said he has been a resident of Dublin for more than six years and understands the standards for aesthetics for this city. He restated their intent is for convenience and safety. He said if the corner of the fence that is encroaching on the utility easement is an issue, he would be willing to move that back three feet, which would meet eliminate one of the variance requests.

Mr. Gunnoe asked if there were any questions for the applicant.

Mr. Zitesman said the applicant mentioned unauthorized use of your trampoline and asked if he had witnessed the behavior.

Mr. Jones responded they have seen kids from the neighborhood on the trampoline. He also stated the use the basketball court which he does not mind because it does not pose a safety issue. He explained that they do not have young kids in the neighborhood that come down and use the trampoline when they are not home. He stated that they asked the kids to leave the yard.

Mr. Zitesman suggested speaking to the parents of those children.

Mr. Jones said some of the kids are from their neighborhood and some from other neighborhoods. He said they have not gone to that extreme because the behavior usually discontinues, intermittently.

Rion Myers asked if they plan on tying into the existing fence on the east or adding a new fence directly beside the fence.

Mr. Jones confirmed they would just join the neighbor's fence but the Code requires a five-foot setback.

Mr. Gunnoe thanked the applicant and asked if there was anyone from the public that would like to comment on this application.

Rob Bruno, owner of Ace Fencing and Deck, said he was the applicant's contractor. He said he is a reputable licensed contractor for almost 20 years. He said split-rail fencing is one of the limited styles of fence that tend to be approved in Dublin. He said many of his other customers have made requests for fences that do not get approved. He stated that he believes Mr. Jones is different from other customers because of the existing fence on his neighbor's property. He asked the Board to be flexible. He stated the walking path is not going to be obstructed and stated that if they an alleyway between two fences it would increase the foot traffic.

Mr. Myers asked if he had explored natural fencing such as bushes to deter people from coming through the property.

Mr. Bruno replied that the concern is if planting material harm someone that is walking on your property, you create a liability for the property owner. He also said small dogs or dogs that dig need a fence.

Mr. Zitesman stated that the issue of a neighbor having a non-conforming fence is not an unusual occurrence. He explained that the Board needs to uphold the Code that has been approved by City Council unless it meets the criteria. He said they adhere to that criteria so they can be fair and objective to everybody. He concluded that they are in a transition and their charge is uphold the Code and to only grant the variances where the conditions are met.

Mr. Bruno said he appreciated the Board's comments.

Mr. Gunnoe said if there were no other questions or comments, he would close the public portion of the meeting and open the discussion up to the Board.

Mr. Zitesman said there are always tough decisions to make but they have to be consistent. He believes it does not meet the criteria.

Mr. Gunnoe said he agreed with that statement. He stated that his property in Dublin has the same conditions where if he built a fence that meets the regulations, he would be a very small portion of this yard. He said granting this applicant a variance would be considered a special privilege. Furthermore he stated that he did not think the proposal met the intent of the Code which is to create open view sheds.

Mr. Todoran asked if they could vote on the variance separately.

Ms. Noble-Flading responded affirmatively.

Mr. Todoran asked if they could allow the variance for the five-foot setback. It said that it seems unusual to have a five foot separation that a property owner would have to mow and maintain.

Mr. Todoran verified that the existing fence was constructed under the previous Code.

Ms. Noble-Flading said yes.

Mr. Zitesman said that he sensed the applicant was most interested in the variance to the rear yard setback. He stated that he did not think granting a variance to the side yard setback achieved the applicant's goal.

Mr. Gunnoe said if they did not approve the side yard setback, they could modify the request to meet the rear yard setback and still tie into the neighbor's fence.

Mr. Jones said his fear is that if the five-foot is granted but not the rear yard setback, the fence would run right down the middle of the backyard.

Mr. Bruno said even though it will not necessarily give Mr. Jones what he wants by moving it over five feet, it would be helpful not to have two fences side-by-side or within five feet because in his mind, it creates a bigger issue of maintenance.

Mr. Zitesman said as property owner comply with the Code, it will improve and not just be a narrow views between fences.

Mr. Myers said the Board is not in the business of changing Code.

Ms. Noble-Flading said anyone can make recommendations to City Council to modify Code but ultimately the approval of a modification is City Council.

Mr. Bruno asked if natural fencing, such as landscaping to help Mr. Jones with his dog, if there were recommendations or ideas.

Mr. Zitesman suggested an "Invisible Fence" as a possible solution.

Mr. Bruno said that it would not prevent other dogs from entering the property or keep kids off the trampoline.

Mr. Gunnoe asked if there were further questions or comments. He asked if the language was prepared for a motion.

Ms. Noble-Flading specified that there are two motions; the first being associated with the setbacks; and the second associated with the easement.

Motion and Vote

Motion #1: Mr. Gunnoe made the motion, seconded by Mr. Zitesman, to disapprove the variance to Zoning Code Section 153.231 to allow a four-foot privacy fence to be located 18 feet, 6 inches in the required rear yard and five feet into the required side yard setbacks because it does not meet all the required variance standards and review criteria. The vote was as follows: Mr. Todoran, no; Mr. Myers, yes; Mr. Mr. Zitesman, yes; and Mr. Gunnoe, yes. (Disapproved 3 – 1)

Motion #2: Mr. Gunnoe made a motion, seconded by Mr. Zitesman to disapprove this variance to Zoning Code Section 153.231 to allow a four-foot privacy fence to be located within the recorded easement because it does not meet all the required variance standards and review criteria. The vote was as follows: Mr. Myers, yes; Mr. Todoran, no; Mr. Zitesman, yes; and Mr. Gunnoe, yes. (Disapproved 3 – 1)

Mr. Gunnoe said the next meeting is scheduled for June 26, 2014, and adjourned the meeting at 7:14 p.m.