

**BOARD OF ZONING APPEALS
MINUTES FOR THE
July 13, 2016
MEETING**

Pursuant to written notice, the meeting of the Board of Zoning Appeals (the "BZA") was called to order by Chairman Al Schutte at 7:37 PM on Wednesday July 13, 2016, in the Council Chambers of the Village of Evendale Municipal Building. Attending were Chairman Al Schutte, members Dave Harwood, Rhett McGregor, Mike Reed, and Ken Valentine. Supporting the BZA was Pam Morin (staff).

Joseph Berns Jr.

3451 Sherbrooke Drive

**Applicant has submitted an appeal of the Building Commissioner's determination to deny the installation of the electrical fence on his property in accordance to Section 1266.09(h)(1)(A)(ii) of the Village of Evendale Zoning Code
File #V-16-02**

Mr. and Mrs. Berns are avid gardeners and have spent years landscaping their rear yard. To protect their gardens from deer, they have installed an electrical fence along the rear and a portion of their side yards. This fence carries 1.5 – 2.0 volts, stands 3 – 4 feet high, is loosely connected between the stakes, and is only turned on from dusk to dawn. Mr. Berns has tried other methods to keep deer out of his yard, but has found that the electric fence works the best.

Mr. Reed expressed concern for the health and welfare of neighborhood children. Mr. Valentine asked Mr. Burns if he has discussed the issue of deer with other residents who have gardens. Mr. Berns answered no. Mr. McGregor asked Mr. Berns if he would be willing to install and maintain a sign warning people of the electrical fence. Mr. Berns responded yes.

Mrs. Daggy, neighbor, stated that she has no concern with the electrical fence or children's welfare should they come into contact with it. She also commented that the Bern's garden is unique in not only the number of plants but the size and care that Mr. and Mrs. Berns spend on their garden. Mrs. Hui, neighbor, takes care of the garden when the Berns are out of town. She feels that because the garden is isolated and wooded it doesn't pose a safety issue.

Mrs. Needham, neighbor, expressed her concern of the installation of the fence and is worried that if the variance is granted, more residents will be installing electrical fences.

Mr. Schutte read into the record the letter that the BZA received from Mrs. Utz, neighbor, stating that she is against the variance.

WHEREAS, pursuant to Evendale Zoning Code Section 1284.01, the Board of Zoning Appeals, upon application thereto, shall have the powers as granted to them per § 1270.04 of this Code, including, but not limited to, hearing and deciding appeals and granting variances from the provisions and requirements of this Zoning Code which will not be contrary to the public interest or the general purpose and intent of this Code, and only in those specific instances defined by this chapter and based upon the standards set forth in this chapter;

WHEREAS, Mr. Joseph Berns, 3451 Sherbrooke Drive, Evendale, Ohio (the "Property"), received a letter on April 6, 2016 requesting Mr. Berns to remove the electric fence that he had installed on said Property;

WHEREAS, the applicant timely filed an appeal (within 14 calendar days, as set forth in Section 1284.03 of the Code) and the BZA timely (within calendar 60 days, as set forth in Section 1284.03(d) (1) of the Code) held a public meeting at the Village of Evendale Municipal Building after providing the requisite notice; and

Mr. Schutte read into the record the following justifications set forth in Section 1284.05(c):

1. Whether the property will yield a reasonable return without the variance or whether there can be beneficial use of the property;
2. Whether the variance is substantial;
3. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
4. Whether the variance would adversely affect the delivery of governmental services;
5. Whether the property owner purchased the property with knowledge of the limitations currently imposed on it by this Zoning Code;
6. Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and
7. Whether the spirit and intent behind this Zoning Code would be observed and substantial justice done by granting the variance.

Section 1284.05 (b) Prohibited Variances. Notwithstanding any other provision of this chapter, no variance shall be granted that:

1. Is intended as a temporary measure only;
2. Is greater than the minimum variance necessary to relieve the particular hardship or practical difficulty demonstrated by the applicant; or
3. Constitutes a change in land use resulting in the establishment of a use not normally permitted in the applicable use district.

After hearing Mr. Bern's testimony and reviewing the documents filed, the BZA establishes the following findings of fact:

1. The applicant timely filed an appeal from the denial
2. The Village of Evendale timely and properly provided public notice as well as notice to all required parties;
3. The BZA timely conducted a hearing.
4. The weight of the evidence before the BZA did not satisfy justifications 2, 3, and 6.

NOW, THEREFORE, upon motion made by Mr. Reed, duly seconded by Mr. Valentine and adopted by a vote of 4 in favor, 1 against, the BZA denied the variance.

Warren Gase

3533 Sherbrooke Drive

Applicant has submitted an application for a 4'-5" variance from the maximum allowable height of 12' on an accessory building in the Residential District as set forth in Schedule 1266.04(A) of the Village of Evendale Zoning Code.

File #V-06-03

Kent Roush, Kent Bradley Roush Architects, spoke on behalf of Mr. and Mrs. Gase. He explained that the Gases have submitted plans for a detached two-car garage with 2nd floor attic storage area. This 1 1/2 story structure will be located at the end of their existing driveway and will be built into the hillside at the rear. Their property slopes from front to back making the rear

height 4 ½" higher than the front. The design of the proposed garage will match the pitch of the existing house. The Gases have agreed to plant and maintain evergreen trees along the perimeter of the property.

Mr. Gase testified that they have looked for another home to resolve their storage problem, but couldn't find one in the area. Parking extra cars in front of their house is not an option because of the amount of traffic on Sherbrooke Drive and there is a landscape island in front of their home.

Mr. McGregor asked is it would be possible to mound dirt along the back of the proposed garage to raise the ground level, making the variance unnecessary. Mr. Roush was hesitant to commit to doing that stating that he was concerned about the water run off on neighboring properties.

Mr. Reed stated that the Park Hills Home Owners Association approved the plans for the detached garage.

WHEREAS, pursuant to Evendale Zoning Code Section 1284.01, the Board of Zoning Appeals, upon application thereto, shall have the powers as granted to them per § 1270.04 of this Code, including, but not limited to, hearing and deciding appeals and granting variances from the provisions and requirements of this Zoning Code which will not be contrary to the public interest or the general purpose and intent of this Code, and only in those specific instances defined by this chapter and based upon the standards set forth in this chapter;

WHEREAS, Mr. Gase, owner of 3533 Sherbrooke Drive, Evendale, Ohio (the "Property"), submitted a request to the Building Commissioner of Evendale, Ohio for building permit allowing him to build a detached garage;

WHEREAS, the application was denied by the Building Commissioner on May 16, 2015 because the proposed detached garage exceeds the maximum allowable height of 12" as noted in Schedule 1266.04(A) of the Evendale Zoning Code (the "Code");

WHEREAS, the applicant timely filed an appeal (within 14 calendar days, as set forth in Section 1284.03 of the Code) and the BZA timely (within calendar 60 days, as set forth in Section 1284.03(d) (1) of the Code) held a public meeting at the Village of Evendale Municipal Building after providing the requisite notice; and

Mr. Schutte read into the minutes the two letters that were received from neighbors approving the plans for the detached garage.

After hearing Mr. Bern's testimony and reviewing the documents filed, the BZA establishes the following findings of fact:

1. The applicant's request for a building permit for the construction of a detached garage on the Property was correctly and timely denied;
2. The applicant timely filed an appeal from the denial
3. The Village of Evendale timely and properly provided public notice as well as notice to all required parties;
4. The BZA timely conducted a hearing;
5. The weight of the evidence before the BZA satisfied enough of the justifications set forth below that the BZA is required to consider when determining whether to grant a variance from the provisions of Schedule 1284.05(c):

- a. Whether the property will yield a reasonable return without the variance or whether there can be beneficial use of the property;
 - b. Whether the variance is substantial;
 - c. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
 - d. Whether the variance would adversely affect the delivery of governmental services;
 - e. Whether the property owner purchased the property with knowledge of the limitations currently imposed on it by this Zoning Code;
 - f. Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and
 - g. Whether the spirit and intent behind this Zoning Code would be observed and substantial justice done by granting the variance;
6. The applicant will screen the rear of the property with evergreens as approved by the Park Hills Home Owners Association.

NOW, THEREFORE, upon motion made by Mr. Reed, duly seconded by Mr. Harwood and adopted by a vote of 5 in favor, 0 against the BZA approved the variance.

A motion was made by Mr. Valentine and seconded by Mr. Harwood to approve the minutes of the May 24, 2016 meeting as read. The motion passed with a 5 – 0 vote.

The meeting was adjourned at 9:00 PM.

Attest:

Al Schutte, Chairman
Board of Zoning Appeals