

**Miami Township
Board of Zoning Appeals
Monday February 1, 2016**

Members of the Board of Zoning Appeals present:

Brent Anslinger, Chairman
Gregory Clatterbuck
James Hamilton
John Broz
Richard Poore

Members of Miami Township Staff present:

Kyle Hinkelman, Deputy Director

Others present:

Tony Beckert, 8534 Yankee St
Sharon Prichard, 2354 Ferndown
Richard Anglin, Dayton Christian Schools

GENERAL MEETING

Mr. Hamilton called the meeting to order at 7:00 PM.

Action on minutes for November 2, 2015

Mr. Poore made a motion to approve the minutes from November 2, 2015 and Mr. Hamilton seconded the motion. The vote was all ayes.

THE OATH

Mr. Anslinger administered the Oath of Truth to the following people:

Kyle Hinkelman, Miami Township
Richard Anglin, Dayton Christian
Sharon Pritchard, resident
Tony Beckert, Southbrook Christian Church

NEW BUSINESS

BZA #805-16 Variance

Mr. Anslinger announced the case to be heard as BZA #805-16 filed by Gerald Ittel.

Mr. Anslinger asked Mr. Hinkelman if the case had been properly advertised and the nearby landowners notified to which he replied they had.

Mr. Hinkelman stated that the applicant is seeking approval on a Variance to construct a ten foot fence around a proposed tennis court at the property located at 9095 Washington Church Road that is zoned "O" Office district.

Mr. Hinkleman notified the Board that throughout the district the maximum fence height allowance is six feet and has very few exceptions. Miami View Park is one exception that does have a ten foot fence around the tennis court but also noted that government is currently exempt from zoning codes pertaining to fencing and that there was no record on file of when that fence was constructed.

Mr. Hinkelman explained to the Board that the applicant's property is a church and that the proposed ten foot fence and tennis court would primarily be used by the school located next door. He also explained that the proposed area for the tennis court and fence is currently a vacant field and that the applicant believes to have a hardship in this case.

Mr. Hinkelman noted that Southbrook Church already applied for a zoning certificate and has been approved for a six foot fence in the desired location. He also noted that the Dayton Christian School next door was previously approved for a tennis court with a ten foot fence as part of their Preliminary Development Plan by the Zoning Commission however they have now determined the area would probably be better suited for parking on their site or another use.

Mr. Hinkelman advised the Board that should they feel there is a unique hardship in this case then Staff would ask they specify the height of the allowed fence. He reminded the Board that a variance runs with the land so that approval would allow the current or any future tenant on that site to use that ten foot fence however they wish.

Mr. Anslinger asked Mr. Hinkelman to clarify what the fencing requirements are in the township to which Mr. Hinkelman explained that the maximum permitted height in all areas is six to eight feet with razor edging. He further noted that fences with razor edging were typically used in industrial areas for safety reasons. He stated that exceptions to this height requirement would be the tennis court located at Miami View Park and any Planned Developments that included a ten foot fence when they were approved by the Zoning Commission.

Mr. Hinkelman explained to the Board that in a Planned Development that is approved by the Zoning Commission the applicant seeks approval on an entire development which includes exactly where and what uses the entire development would have. He further explained that in straight zoning the use is by right and there are more restrictions and control on permissible accessory structures and fences.

Mr. Broz asked Mr. Hinkelman if the applicant could have the property rezoned as a Planned Development to which Mr. Hinkelman explained that he could and that the rezoning would then have to go through the process with the Zoning Commission. He also noted that Dayton Christian had requested a Planned Development for their property since it would be better suited for their location and that the Church is zoned as an Office District.

Mr. Hamilton asked if an applicant could be approved by the Zoning Commission for a ten foot fence as part of a Preliminary Development Plan to which he replied they could. He stated that the school has more flexibility due to it being a Planned Development but that tennis courts with a ten foot fence were not permitted in land zoned "O" Office district. He also added that Staff has no ability to approve a ten foot fence permit without an approved variance.

Mr. Hamilton asked where the spectators would be located if the tennis court would be constructed in the proposed location to which Mr. Hinkelman replied that the applicant would better be able to comment on that.

Mr. Anslinger asked if there was anyone present to speak in favor of this case and Mr. Anglin, the President of Dayton Christian School came forward.

Mr. Anglin confirmed that the original Preliminary Plan for the school had included tennis courts with a ten foot fence but, stated as the property began to take shape it was determined that the original location chosen would be better suited for a gymnasium as the roadways on the property were reworked to better suit the student and school's needs. He further stated that the only green space located on the property was currently being used for student's recess and recreation activities and that the school felt this was the safest area for the students to be located during those times. He also noted that Southbrook does lease areas of their property to Dayton Christian for various recreational activities.

Mr. Anglin continued, that with Southbrook constructing their new amphitheater he felt that the proposed location was the best suited solution. He also noted that the school's tennis coach was not confident that a six foot fence would be contusive to the activities or safe for spectators. He further noted that he did not foresee any future lighting or signage requirements for this area. He also noted that currently most practices take place off campus.

Mr. Hamilton asked Mr. Anglin what the relationship between Southbrook and Dayton Christian was to which he responded that the school leases land from the church and that Southbrook has an easement to use the schools driveway. He further noted that many of the students at the school are also members of the church.

Mr. Hamilton asked how long the lease was for and Mr. Anglin replied that there was currently no expiration.

Mr. Clatterbuck asked Mr. Anglin if he ever considered purchasing the property from the church to which he replied it would be difficult given the current liens on the property.

Mr. Anslinger noted that even if the property was sold that it would not change the zoning of the property and Mr. Hinkelman confirmed.

Mr. Clatterbuck asked what the other reasons were for the tennis court not being in the PD and Mr. Anglin replied it was primarily because of the school's desire to build a

gymnasium in the future as well as modifying traffic flow on the property as recommended by CESO.

Mr. Anslinger asked if anyone in opposition of this case would like to speak and Ms. Sharon Pritchard a resident of Miami Township came forward.

Ms. Pritchard stated her concerns about the tennis court backing up to her neighborhood and the noise levels during the recreational activities at the church and school. She noted that the lights and noise being produced by the property are a detriment to her ability to enjoy her property.

Mr. Anslinger asked Mr. Hinkelman to explain if there are lighting requirements to which Mr. Hinkelman responded that in an office district there were different regulations permitted then in a residential area.

Mr. Anslinger commented that even though the property was once occupied by NCR it is still zoned as an office district.

The Board discussed the case.

The Board asked Mr. Hinkelman for the reasoning behind requiring a six foot fence and Mr. Hinkelman stated that the standard has been in place since at least the 80's and is fairly consistent throughout Montgomery County.

Mr. Anslinger asked if there was anyone else present to speak in favor or opposition to this case or if there were any other public comments and no one came forward.

The Board proceeded to vote on the following findings of fact:

In each specific case, the Board of Zoning Appeals shall not grant a variance unless it shall make specific findings of fact directly based upon the particular evidence presented to it, that support conclusions that:

A. The variance requested will adversely affect the public health, safety, or morals.

Clatterbuck: N Hamilton: N Anslinger: N/A Broz: N Poore: N

B. The strict application of the provisions of this Resolution from which a variance is requested will constitute unnecessary hardship upon the property owner.

Clatterbuck: N Hamilton: N Anslinger: N Broz: N Poore: N

C. The variance requested will compromise the general spirit and intent of this Resolution.

Clatterbuck: Y Hamilton: Y Anslinger: Y Broz: Y Poore: Y

D. The variance arises from special conditions, which are unique to the property and the situation results from an enforcement of this resolution and not by actions of the property owner or any party who has had control of the property.

Clatterbuck: N Hamilton: N Anslinger: N Broz: N Poore: N

E. The variance requested does not involve extension of an existing structure into a required yard in excess of one-third (1/3) of the required depth or width of the required yard and is a permitted variance under Subsection 403-B.

Clatterbuck: N/A Hamilton: N/A Anslinger: N/A Broz: N/A Poore: N/A

Mr. Hamilton made a motion to deny case 805-16. Mr. Broz seconded the motion and the vote was all ayes.

Mr. Anslinger informed the applicant that the Board of Zoning Appeals is a more legal process and encouraged them to look into another process for approval within the Zoning Commission.

Additional Business Items and Announcements:

Mr. Hinkelman requested that the Board elect the Chairman and Vice Chairman for the Board. The Board unanimously agreed to have Mr. Anslinger as the Chairman and Mr. Hamilton as the Vice Chairman.

Mr. Clatterbuck motioned to adjourn the meeting at 8:00 p.m., Mr. Hamilton seconded the motion and the vote was all ayes.



Mr. Anslinger, Chairperson

Respectfully Submitted,
Nicole Kessel, Recording Secretary