

**BLUE ASH BOARD OF ZONING APPEALS**

**JUNE 11, 2007**

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**ITEM 1. – MEETING CALLED TO ORDER**

Chairman Paul Collett called the regular meeting of the Board of Zoning Appeals to order at 7:03 p.m. on Monday, June 11, 2007.

MEMBERS PRESENT: Paul Collett, Jr., John Berry, Julie Brook and Marc Sirkin

ALSO PRESENT: Assistant Community Development Director Dan Johnson, Administrative Clerk Traci Smith, Economic Development Director Judy Clark and interested citizens.

**ITEM 2. – APPROVAL OF MINUTES**

The Board waived the reading of the minutes of May 14, 2007.

DECISION: Marc Sirkin moved, John Berry seconded the motion to approve the regular meeting minutes of May 14, 2007. A voice vote was taken. All members present voted aye. Motion carried.

**ITEM 3. – 10 FALLING BROOK LANE – Mark W. Ossege**

Variance to allow a reduced rear setback for a residential addition in an R-1 district

PRESENT: Mark Ossege, Owner

Chairman Collett swore in those wishing to testify and gave a brief overview of the Board of Zoning Appeals.

Mark Ossege explained that he would like to build a larger garage to be able to store his car, motorcycle and tools. This would also allow him room to get his garbage can in the garage. The only way to accomplish this is to expand to the rear. Dan Johnson confirmed for the Board that the property to the rear is owned by the City of Blue Ash and the setbacks for most of the homes in this area are at near zero lot lines since this area is considered a Planned Development with a designated green space.

As there were no further questions Chairman Collett closed the public hearing portion of the meeting.

DECISION: John Berry moved, Marc Sirkin seconded to approve a rear setback variance in the R-1 district at 10 Falling Brook Lane for the expansion of a garage per plans submitted based upon the supporting information provided by City Staff in the agenda and particularly due to the fact that there is a City of Blue Ash owned green space immediately behind this property that helps mitigate the fact that it will be less than the required setback. A roll call vote was taken. All members present voted aye. Motion carried.

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**ITEM 4. – 6501 CORNELL ROAD – John H. Phillips, Phillips Law Firm, Inc.**

Appeal of Zoning Administrator's Order to Comply to cease residential use of the property in a C-2 district (Postponed from meeting originally scheduled for May 14, 2007)

PRESENT: John Phillips, Appellant  
Israel and Anita Garza, Owners

Chairman Collett swore in those wishing to testify and gave a brief overview of the Board of Zoning Appeals.

John Phillips explained that this property was constructed in 1940 as the old-fashioned type of building with the commercial use on the downstairs and the residential use upstairs. In response to the City's initial request for verification that the property had been in continuous residential use, Ruth Ingram, the previous owner, provided an affidavit that covered only nine years. The Zoning Code requires that verification is needed back to 1971. Mr. Phillips said he was able to locate Mrs. Ingram in Georgia and learned that she acquired the property in May, 1970. Mrs. Ingram confirmed, by affidavit, that the property was in continual residential use since she purchased it and up until the time Israel Garza's company bought the property. Mr. Garza has used the property as residential ever since. The Garzas provided photos to show that it is in residential use.

Paul Collett asked if this was a legal nonconforming use until some change came about. Dan Johnson said he does not know if it was legal, but that it is a nonconforming use; that is the question at issue. John Phillips said this issue surfaced when the Garza's needed verification for the mortgage company that this property was zoned correctly before they would lend him money. At the time, this could not be proved. As a result, Mr. Garza had to get a high risk loan to get the property financed in order to fulfill the requirements of the land contract. At this point, since this was brought to the attention of the City, Mr. Garza was asked to prove this was a legal nonconforming.

The Board was in agreement that the documents presented support the contention that the property has been in sufficiently consistent nonconforming residential use since 1971 and, therefore, is legal. The Board saw no reason to dispute the affidavit provided. Marc Sirkin asked Mr. Garza if he would be able to get a lower risk mortgage. Mr. Garza said he would need a letter from the City stating this is a legal nonconforming use that he could provide to the mortgage company.

Marc Sirkin asked if the Board has the power to decide the appeal. Dan Johnson said the Board does have the power and that the Board can determine what type of evidence is sufficient to decide the issue. Paul Collett summarized that the Board is determining whether the nonconforming residential use is legal and, if so, overturning the Order issued by the Zoning Administrator.

John Berry said he personally knows this property was used as a residence in the early 1990's as his wife is an elementary teacher at Mapledale Elementary School and they visited one of her students on the second floor.

As there were no further questions Chairman Collett closed the public hearing portion of the meeting.

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**DECISION:** Marc Sirkin moved, Julie Brook seconded to overturn the Order to Comply to vacate premises at 6501 Cornell Road based upon the affidavit provided by Ruth B. Ingram, which is satisfactory evidence that the nonconforming residential use of the property was established before February 25, 1971 and has not been discontinued for any period of more than one year between that date and today. A roll call vote was taken. All members present voted aye. Motion carried.

**ITEM 5. – 4567 COOPER ROAD – Russell O'Brien**

Variance to allow a reduced front setback for a residential addition in an R-3 district

**PRESENT:** Russell O'Brien, Appellant/Owner

Chairman Collett swore in those wishing to testify and gave a brief overview of the Board of Zoning Appeals.

Russell O'Brien explained that he would like to tear out his deteriorating concrete front porch and replace it with a covered, composite wood porch.

Dan Johnson explained the distance from the average setback to the proposed setback is approximately 1.2-feet and because they would like to have it covered, it requires a variance.

Carole Hadden, the neighbor next door to the north, said she is in favor of this improvement.

As there were no further questions Chairman Collett closed the public hearing portion of the meeting.

**DECISION:** Julie Brook moved, John Berry seconded to approve a variance for a reduced front setback at 4567 Cooper Road as this will enhance the neighborhood and is nearly within the average front setback of the rest of this neighborhood. A roll call vote was taken. All members present voted aye. Motion carried.

**ITEM 6. – MISCELLANEOUS BUSINESS**

Paul Collett mentioned to the Board that the end of each motion should include the conditions of City Staff, if there are any and if the Board agrees with them. He noted that a recent deposition regarding a billboard made it clear that complete motions and meeting minutes are very important if there is ever a lawsuit that comes from a Board hearing. John Berry mentioned that the protocol for the State Board of Building Appeals is that one person on the Board is designated to make all motions. The whole Board discusses the matter, but one person actually makes all of the motions and the language is always consistent. Dan Johnson said he would research a good standard for making motions.

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**ITEM 7. – ADJOURNMENT**

DECISION: There being no further business, John Berry moved, Marc Sirkin seconded to adjourn the meeting. A voice vote was taken. All members present voted aye. The meeting was adjourned at 7:53 p.m.

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Paul Collett, Chairman

MINUTES RECORDED BY:

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Traci Smith, Administrative Clerk