

Application for an Appeal to the Board of Zoning Appeals

Hamilton Township Board of Zoning Appeals

**Mr. Daniel Ferris, 6875 Prairieview Drive
7:00 PM, November 19, 2015**

General Information

- Applicant / owner:** Mr. Daniel Ferris
6875 Prairieview Drive
Maineville, Ohio 45039
- Property Location:** 6875 Prairieview Drive
Miami Bluffs Subdivision
Hamilton Township, Ohio 45039
- Contiguous Owners:** See application.
- Existing Zoning:** R-4 PUD Single Family Residence Zone
- Existing Land Use:** SFD
- Parcel Information:** Size 0.179 acres
Land Use SFD
- Surrounding Land Use:** North: R-4 PUD Single Family Residence Zone
East: R-1 PUD Single Family Residence Zone
South: R-1 Single Family Residence Zone
West: R-1 Single Family Residence Zone
- Requested Action:** The applicant has requested a variance from Section 6.03.B.4 in order to construct a patio enclosure into the minimum thirty (30) feet setback requirement for Miami Bluffs Subdivision. The deck would protrude ten (10) feet into the rear yard setback reducing it from the required thirty (30) feet to twenty-six (26) feet.
- History:** Staff left a message for Mr. Ferris stating the deck application was denied due to the required rear yard setback. Mr. Ferris called staff and after some discussion it was decided he would apply for the variance. The variance was received in the office on October 21, 2015. The hearing date was then set by the Board for November 19, 2015.
- Applicable Regulations:** In Section 6.1.3.E The Hamilton Township Zoning Code, states,

The rear yard setback shall extend the full width of the lot and shall be measured from the rear lot line.

Section 6.1.3.A of The Hamilton Township Zoning Code, states,

Setbacks refer to the unobstructed, unoccupied open area between the furthestmost projection of a structure and the property line of the lot on which the structure is located.

Miami Bluffs Subdivision has a rear yard setback of thirty (30) feet.

Similar Cases:

Mr. Bays / Champion, 6/26/2014, 411 Crossbow

Applicant requested a variance to construct a patio enclosure in the rear yard setback, reducing it by twelve (12) feet. Variance was approved.

Mr. Stephen Knepfle, 4/4/2013, 8353 Yankee Pass

Applicant applied for a variance to construct a deck, leaving the rear yard setback at eighteen (18) instead of the required thirty (30.) Variance was approved with stipulations.

Mr. & Mrs. James Buck, 6/28/2012, 537 Misty Dawn

Applicant applied for a variance to construct a roof over existing patio and reduce the rear yard setback from the required thirty-five (35) to twenty-three (23) feet. Variance was approved.

Mr. Pete Reed, 3/15/2012, 3104 Village View Lane

Applicant applied for and was granted a ten (10) foot variance to construct a deck into the required thirty (30) feet rear yard setback.

Mr. Jerry Clark, 10/6/2011, 5184 Emerald View Drive

Applicant requested a variance to allow construction of a deck two (2) foot into the required twenty-five (25) setback. Variance was approved.

Mr. Frank T. Schroeder, 7/28/2011, 1288 Shawnee Run Drive

Applicant applied for and was granted a six (6) foot variance to allow a deck in the rear yard setback.

Sabo Design & Associates, 7/28/2011, 904 Grande Oaks Drive

Applicant applied for a variance to construct a deck and enclosed patio in the rear yard setback. Variance was approved for fifteen (15) feet not the requested seventeen eight (17.8).

Site Summary:

This property is located in the Miami Bluffs Subdivision, lot 108. The property rises slightly from street to the rear yard. The dwelling is sixty-one (61) feet deep and forty-five (45) feet wide on .1788 acres. This three bedroom, three baths with a full basement home was built in 2010. Current owners have resided in the house since it was constructed.



Hardship Requested: Applicant states the following reasons for the hardship request:

I want to extend living space (deck) in backyard so I do not have to go downstairs to go outside to grill. Behind my house is green space and I have planted some evergreens for more privacy. No neighbors are affected except on either side and both approve this proposed deck.

Analysis:

The Ohio Supreme Court granted townships and cities the authority to review area variances in *Kisil v. City of Sandusky*, where a property owner requested permission to use the property in a manner not permitted by the zoning code.

The court concluded that area variances (variances dealing with height, acreage, frontage and setbacks) involved "practical difficulties" by which a property owner, unless granted a variance, could not use a property for the purpose, which it was zoned.

In other words, the particular physical surroundings, shape, topographical condition or other extraordinary situation or condition of the specific property involved would effectively prohibit or unreasonably restrict the utilization of the property or would constitute a clearly demonstrable hardship, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out.

Recommendation:

Staff recommends approval of the request. We have this happen many times in neighborhoods where the cul-de-sac bumps the house far back into the rear yard. Buyers are not made aware at the time of purchase and therefore unable to complete their plans for the backyard. We have had instances where the second story sliding glass door has been nailed shut since there was no room for a deck in the rear yard. It is an issue staff is noting on all permits to help address the issue. Till it is resolved buyers beware and shame on the builders!

