

# Application for an Appeal to the Board of Zoning Appeals

## Hamilton Township Board of Zoning Appeals

**Mr. & Mrs. Timothy Davidson, 1034 Oak Forest Drive**

**7:30 PM, December 17, 2015**

### General Information

- Applicant / owner:** Mr. & Mrs. Timothy Davidson  
1034 Oak Forest Drive  
Morrow, Ohio 45150
- Property Location:** 1034 Oak Forest Drive  
Thornton Grove Subdivision  
Hamilton Township, Ohio 45152
- Contiguous Owners:** See application.
- Existing Zoning:** R-2 PUD- 2 Family Zone, restricted to Single Family.
- Existing Land Use:** SFD
- Parcel Information:**
- |          |             |
|----------|-------------|
| Size     | 0.285 acres |
| Land Use | SFD         |
- Surrounding Land Use:**
- |        |             |                              |
|--------|-------------|------------------------------|
| North: | R-1 Cluster | 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 6.13.E to reduce the minimum rear yard setback from 30 to 26 feet for a wood deck in Thornton Grove.
- History:** Staff left a message stating the deck application was denied due to the required rear yard setback. Their contractor called staff and after some discussion with the Davidsons it was decided he would apply for the variance. The variance was received in the office on December 1, 2015. The hearing date was set by the Board for December 17, 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.  
  
Thornton Grove Subdivision has a rear yard setback of thirty (30) feet.

**Similar Cases:**

**Mr. Daniel Ferris, 11/19/2015, 6875 Prairieview Drive**

Applicant requested a four (4) feet variance for the construction of a wood deck in the rear yard, variance was granted.

**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.

**Site Summary:**

This property is located in the Thornton Grove Subdivision, Lot 345. The property is flat from street to the rear of the house then drops dramatically. The dwelling is sixty-two (62) feet deep and fifty-four (54) feet wide on .285 acres. This three bedroom, two baths with a full basement home was built in 2007. Current owners have resided in the house since August 2015.



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

*Homeowner would like to build a 12' deck to have room for table & chairs. This will allow the wife to enjoy the deck while her cancer is in remission, the difference is 4 foot.*

**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 denial of the variance. The request is for four (4) feet which is less than other variance requests of this kind but there are other options. Building directly out from the sliding doors will provide a usable first floor access to outside without a variance. The view maybe better for the homeowners, in front of the large glass windows but not as pleasing to the neighbors view of the protruding deck into the rear yard setback.

