

**BLUE ASH BOARD OF ZONING APPEALS**

**October 11, 2010**

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**ITEM 1. – Meeting Called to Order**

Chairman Mark Kirby called the regular meeting of the Board of Zoning Appeals to order at 7:01 p.m. on Monday, October 11, 2010.

MEMBERS PRESENT: Mark Kirby, Julie Brook, Paul Collett, Jr. and Marc Sirkin

MEMBERS NOT PRESENT: Terry Peck

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

**ITEM 2. – Approval of Minutes**

The Board waived the reading and approved the minutes of the Board of Zoning Appeals regular meeting of August 9, 2010.

**ITEM 3. – 9701 Conklin Avenue – Ingrid Anderson**

Appeal of Zoning Administrator's Zoning Code interpretation that a horse is prohibited at a residential property that is not a suburban farm

PRESENT: Ingrid Anderson, Appellant

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

Ingrid Anderson introduced her family and said that her 10-year old daughter, Chloe, has Cerebral Palsy. Through years of research, they have found that equestrian therapy has been studied and is being developed by Cincinnati Children's Hospital as a therapeutic regimen for children with autism, ADHD and Cerebral Palsy. She said that Chloe has a low endurance and only has approximately 7-8 hours a day that she is awake; therefore, it would be difficult for her to go to an equestrian program. Ms. Anderson said she has a degree in Horticulture so she understands how to treat soil for fecal matter. She said she is also a certified nursing assistant and a vet tech so she feels she has a good foundation for equestrian therapy. They are working with The Delta Society to get their horse, Kate, registered as a therapy horse. She said Kate is very clean and they keep their yard very clean. John Traub, Ms. Anderson's fiancé, showed the Board pictures of the horse. Mr. Traub is a Special Ed teacher in the Sycamore School district. He said some of his students have come over to see Kate and are hoping they could open this type of therapy to the community. Ms. Anderson also mentioned that she has a letter from Dr. Levin of Children's Hospital which prescribes this therapy regimen.

Paul Collett said it is not the job of the Board to challenge the value of the therapy, just the Administrator's interpretation of the code. Mr. Collett had concern about the possibility of bringing children and other groups to their residence for this equestrian therapy and becoming a home-based business, which could also lead to a liability. Mr. Traub said that some of the kids from his class know he lives there and just stop by. Ms. Anderson said they have only discussed this and are not moving forward with that at this time, especially since they do not yet have approval to keep Kate. In answer to a question, Ms. Anderson said they are under a land contract with this property. Mr. Collett asked if they had obtained a permit for the fence they are erecting. Ms.

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Anderson said they did not have a permit and have stopped erecting until they get the permit.

Julie Brook commented that the discussion needs to be concentrated on the zoning appeal and the horse, not a fence or a home-based business. Ms. Brook said they are to determine that the horse is a pet or for therapy only, not to reproduce, not for sale, not for profit, not for fundraising, etc. and whether or not they can go beyond saying they need to be on a suburban farm because it is no longer a farm animal. Ms. Brooks said she had concern that Ms. Anderson has different ideas in the future outside of therapy for her daughter and that if they were granted the appeal it would need to be for family use only. Ms. Anderson agreed, but was just trying to think of other children who are like Chloe.

Marc Sirkin prefaced his question saying that he does not know firsthand what it is like to raise a child like this, but wondered why a dog would not be a suitable alternative and why is a big dog different from a tiny horse. Ms. Anderson explained that dogs are pack animals and horses react differently to an individual's energy. She said that Chloe does have a seizure alert dog but that she is not nearly as in tune with the dog as she is with the horse.

In answer to a question, Kate would be kept outside in an accessory structure during the winter or possibly in their walkout basement/garage. They said that had not yet made that decision and would decide based upon the outcome of the meeting.

At this point, the Board listened to public comments.

Robert Ruwe who lives at 4646 Miller Road said he hand-delivered a letter to the City and was in favor of the horse.

Gerald Frambes who owns the property at 9707 Conklin Avenue said he is not in favor of a horse in a residential neighborhood and has concerns with being able to sell or rent his property if there is a horse next door. He said his renter has had issues with them and their dogs, but not specifically with the horse. He also said it was his understanding that the horse was pregnant and asked Ms. Anderson if that was true. Ms. Anderson said the horse just looked pregnant and they have joked even about it, but that she is not. When asked if the horse was sterile, Ms. Anderson said she was not but would certainly consider it.

Kathy McClure who lives at 9640 Conklin Avenue said she is in favor of the horse and feels the community should help someone with special needs any way they can.

Shirley Evans Hollander who lives at 4679 Northfield Road said she is in favor of the horse, especially if it is something that will help Chloe. She added that ever since the family moved into the neighborhood, she has been hearing the sounds of good, clean fun.

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

Mark Kirby clarified the two parts the Board was considering. The first being if the horse qualifies as a farm animal or a pet. The second being the potential to waive the five acre minimum for a suburban farm as it applies to this property, which would then allow a horse. Dan Johnson clarified that conditions could not be applied and that it was either yes or no and also that using the word "pet" takes the Board away from what their charge is since the term "pet" is not used in the Code either. The question is not

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whether it is a pet; it is whether it is a horse that was not intended to be regulated under the definition of a suburban farm. Mr. Johnson added that if the Boards decides the horse is not a farm animal and allowed it, then it would be up to the City to administer the Code should they step over into any activity associated with the horse that approximated a home-business and unrelated to whether or not it is a farm animal.

Julie Brook suggested the Code be regulated to the number of animals in a home since it becomes a yard and feces problem for the whole neighborhood. In answer to a question, Mr. Johnson confirmed this was the same family that had complaints against them for allegedly not cleaning up feces at the property on Prospect Avenue and the neighbor requested a variance for an 8-ft. high fence.

Paul Collett asked if there was anything in the Code about keeping a miniature horse underneath or in your house. Mr. Johnson was not aware of anything and, if there is something like that, it is not in the Zoning Code. He added that cleanliness of a yard is governed by the Hamilton County General Health Department and under contract by the City of Blue Ash.

In answer to a question, Gerald Frambes said the issues his renter had with this property were mostly with the eight dogs (running loose, using the bathroom in her yard and attacking a cat) and a 30-ft. camper in driveway, which the driveways are only separated by a strip of grass. He said there were complaints about the horse because she has lived there for two years and there has never been a horse there before. There were also concerns for the care of the horse during the winter.

In reply to some comments made, Ms. Anderson said she has tried to contact the next door neighbor but was not willing or too busy to talk with them. She also said the Health Department visited the property on Prospect Avenue and said their property was immaculate.

John Traub commented that other neighbors who are in favor of the horse were not in attendance due to their health and asked if it would help to get together a petition. Mr. Johnson advised that should the Board uphold the decision there would be an opportunity to appeal to City Council.

There was general discussion among the Board members in regards to the size of the property, the next door neighbor being able to sell or rent their property and Chloe having access to other means of therapy through Children's Hospital.

**DECISION:** Marc Sirkin moved, Julie Brook seconded to uphold City Staff's interpretation of the Zoning Code and deny their request for a variance by Ingrid Anderson at 9701 Conklin Avenue. A roll call vote was taken. All members present voted aye. Motion carried to deny appeal.

**ITEM 4. – 4620 Hunt Road – Dallas Crawford**

Appeal to allow an accessory building (a detached garage) with a reduced side yard setback

**PRESENT:** Dallas Crawford, Appellant

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

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Dallas Crawford said he would like to request a variance so he could set the garage in line with driveway to store a car and lawn equipment.

Paul Collett asked Mr. Crawford if any other options were considered for the orientation of the garage other than directly at the end. Mr. Crawford said yes but thought this was the best option due to the width of his lot. Mr. Collett felt there was a wide array of possible options that would eliminate a variance request and part of the responsibility of the Board is to protect the neighbors. Even though the current neighbor might not have any objections, there might be the possibility that the next owner would not be thrilled with having granted the variance. Mr. Collett is not of the opinion that a variance is justified.

Marc Sirkin said he felt orienting it any differently might block the view of green space for this neighbor to the east.

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

Marc Sirkin thought it was a minor request to make a resident happy. Paul Collett said he did not think it was their job to make people happy, but to enforce the code unless there was a valid reason.

DECISION: Julie Brook moved, Marc Sirkin seconded to approve a variance for an accessory structure to be built at 4620 Hunt Road as proposed. A roll call vote was taken. Three members present voted aye and Paul Collett voted nay. Motion carried.

**ITEM 5. – Miscellaneous Business**

There was no miscellaneous business.

**ITEM 6. – Adjournment**

DECISION: There being no further business, Julie Brook moved, Marc Sirkin seconded to adjourn the Board of Zoning Appeals. A voice vote was taken. All members present voted aye. The meeting was adjourned at 8:14 p.m.

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Mark Kirby, Chairman

MINUTES RECORDED BY:

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Traci Smith