

BEAVERCREEK BOARD OF ZONING APPEALS
REGULAR MEETING, May 11, 2016, 6:00 p.m.

- I. CALL TO ORDER
- II. ROLL CALL
- III. APPROVAL OF AGENDA
- IV. REORGANIZATION
- V. APPROVAL OF MINUTES
A. November 11, 2015
- VI. PUBLIC HEARINGS
A. V-16-1, Sandra & Allen Ray, 3845 Knollwood Drive
- VII. ADJOURNMENT

BEAVERCREEK BOARD OF ZONING APPEALS
REGULAR MEETING, November 11, 2015

PRESENT: Mr. Rushing, Mr. Raber, Mr. Vossler

ABSENT: Mr. Hung, Mr. Roach

Chairman Rushing called the meeting to order followed by roll call.

Mr. Vossler MOVED to excuse Mr. Hung and Mr. Roach from the meeting, seconded by Mr. Raber. Motion PASSED by majority voice vote.

Mr. Vossler MOVED approval of the agenda, seconded by Mr. Raber. Motion PASSED by majority voice vote.

Mr. Vossler MOVED approval of the minutes of October 14, 2015, seconded by Mr. Raber. Motion PASSED by majority voice vote.

PUBLIC HEARING

V-15-8, William Hollon Construction, 2614 Lantz Road a.k.a. 2614 Cinnamon Run

Clerk Gillaugh read the notice of public hearing on an application filed by William Hollon Construction, 3609 Roselawn Drive, Beavercreek, OH 45430 requesting a variance from Chapter 158.030 (I)(1) of the City of Beavercreek Zoning Code, requesting permission to construct a detached garage that would encroach into the required 20-foot side yard setback in a A-1 District. The property is located at 2614 Cinnamon Run a.k.a 2614 Lantz Road further described as Book 5, Page 10, Parcel 20 on the Greene County Auditor's Property Tax Atlas.

William Hollon stated the homeowners are requesting a variance for a 24-foot by 24-foot detached garage. He said it will be constructed of brick to match the house. Mr. Hollon explained in order to stay away from the underground propane tank and the leach field they are requesting a 10-foot side yard setback variance. He said the property will be surveyed before he starts construction.

Ms. Pereira summarized the staff report dated November 6, 2015, which stated if the variance was approved it would allow for the construction of a 24-foot by 24-foot garage that would encroach 10 feet into the 20-foot side yard setback. She discussed the location of the property, and read the language from Chapter 158.030 (I)(3) regarding the setbacks for accessory structures in A-1 Districts. Ms. Pereira explained the lot is a pie-shaped lot that narrows in the front and is wider in the back, and there is a creek that runs through the center of it. She stated staff feels that the variance is justifiable based on the lot layout, the location of the leach field, and the location of the underground propane tank. Ms. Pereira discussed the conditions in the resolution, and recommended approval of the case with three conditions.

BEAVERCREEK BOARD OF ZONING APPEALS, 11/11/15

In public input, Bill Chidley, 2616 Lantz Road, stated he did not have any issue with the construction and just wanted to make sure the property line is defined. He explained they had a survey done by Haley-Dusa in 2006, which they installed pins along the property line every 50 feet. He knew the propane tank was recently installed, and requested the garage is as close to that so the structure can be built as far away from the property line as possible. Mr. Chidley believed there was already some encroachment of the property line, and thought getting it surveyed would be a good thing.

There being no further public input, the public hearing was closed.

Mr. Rushing asked if the survey would define the property line. Ms. Pereira said the surveyor would find the existing pins or install new pins to define where the property line is. She explained staff would ask that before the City comes out to do the inspection that the pins are flagged so they are visible to pull the measurement from the staked property line pins over to the where they are proposing to put the garage to make sure it is 10 feet away from the property line. Mr. Rushing questioned what would happen if there was a difference between the two surveyors as to where the property line was located. Ms. Pereira explained there should not be a difference, and she thought the property owner would save money if they used the same surveyor Mr. Chidley used. She said she has never run into an issue where two surveyors came up with two different locations for the property line.

Mr. Vossler MOVED to approve V-15-8 with three conditions:

1. The approved site plan shall be that which is stamp dated "Received November 5, 2015 City of Beaver Creek Planning Department".
2. An Accessory Structure Zoning Permit must be approved by the Planning and Zoning Department prior to the construction of the accessory structure.
3. A survey must be completed by a registered surveyor and submitted to the Planning and Zoning department prior to the release of a zoning permit.

Motion was seconded by Mr. Raber. Motion PASSED by a roll call vote of 3-0. (Hung, Roach absent)

Mr. Rushing recognized the Veterans since it was Veteran's Day, and thanked them for their service.

Mr. Vossler MOVED adjournment at 7:14 p.m., seconded by Mr. Raber. Motion PASSED by majority voice vote.

Melissa Gillaugh
Deputy Clerk

STAFF REPORT
VARIANCE REQUEST
CASE NO. V-16-1

I. VARIANCE REQUESTED BY:

Sandra and Allen Ray
3845 Knollwood Drive
Beavercreek, Ohio 45431

II. NATURE OF REQUEST:

The applicants are requesting a variance from §158.105 (C) of the City of Beavercreek Zoning Code and is requesting permission to allow a 6' high privacy fence, which exceeds the 42-inch height limit by 30", to be constructed with a 32.5' encroachment into the 40-foot required front yard along the Longview Drive property line within an R-1A, one family residential district.

III. FINDINGS:

1. The property under discussion is located at the southwest corner of the intersection of Longview Drive and Knollwood Drive, within the Knollwood Estates Subdivision.
2. §158.105 (C) Accessory Fences, Walls and Plantings" states "Height of hedges, fences and walls in required front yard. No fence, wall or hedge shall rise over forty-two inches in height within any required front yard".
3. As stated in the Nature of Request portion of this staff report, the applicants are requesting permission to allow a 6' tall privacy fence, which exceeds the 42-inch height limit by 30", to be constructed with a 32.5' encroachment into the 40-foot required front yard along the Longview Drive frontage in an R-1A zoning district.
4. The property currently contains an existing 6' fence that is in compliance with the required setbacks for an R-1A district.

IV. DISCUSSION:

The applicants were issued a violation notice and a stop work order by the Code Enforcement Officer in May of 2015 for constructing a fence without the approval of a zoning permit. The fence, which has not been completed, is positioned 7.5' from the front property line along Longview Drive. The zoning code requires that the fence be located at least 40' from that property line. §158.172 (H)(5)(a) of the Zoning Code outlines the criteria to be used for the granting of variances. This request does not meet the criteria as the variance request is excessive and not the minimum variance possible. The property owners have already demonstrated that a fence can be placed in a location that conforms to the code as evidenced by the existing 6' fence on the property. It is the opinion of staff that additional privacy and security are not justifications for the granting of the variance and that the placement of a fence this close to the front property line detracts from the appearance of the area.

V. RECOMMENDATION:

Staff recommends that the Board of Zoning Appeals find that:

1. The reasons set forth in the application are not valid and do not justify the granting of the requested variance, and
2. The eight items in §158.172 (H)(5)(a) have not been fully satisfied.

Staff further recommends that the Board of Zoning Appeals adopt the attached resolution denying a variance from §158.105(C).

**RESOLUTION
BOARD OF ZONING APPEALS
CASE NO. V-16-1**

WHEREAS, Sandra and Allen Ray have made application for a variance from the strict application of the requirements of the City of Beavercreek Zoning Code for the property located at 3845 Knollwood Drive; and

WHEREAS, the applicant is requesting permission to construct fence that would encroach into the required front yard within an R-1A district; and

WHEREAS, a public hearing was held on May 11, 2016 at which time all persons were given opportunity to comment on the application; and

WHEREAS, the Board of Zoning Appeals finds that the reasons set forth in the application are not valid and do not justify the granting of the variance; and

WHEREAS, the Board of Zoning Appeals finds that subparagraphs 1 through 8 of §158.172 (H)(5)(a) have not been fully satisfied.

NOW therefore the Board of Zoning Appeals orders that:

A variance from §158.104 (E)(1) of the City of Beavercreek Zoning Code to allow construction of said 6' fence, that would encroach 32.5' into the required 40' front yard setback, be denied.

ACTION BY BOARD OF ZONING APPEALS

(Date)

Chairman

**RESOLUTION
BOARD OF ZONING APPEALS
CASE NO. V-16-1**

WHEREAS, Sandra and Allen Ray have made application for a variance from the strict application of the requirements of the City of Beavercreek Zoning Code for the property located at 3845 Knollwood Drive; and

WHEREAS, the applicant is requesting permission to construct a fence that would encroach into the required front yard within an R-1A district; and

WHEREAS, a public hearing was held on May 11, 2016 at which time all persons were given opportunity to comment on the application; and

WHEREAS, the Board of Zoning Appeals finds that the reasons set forth in the application are valid and justify the granting of the variance; and

WHEREAS, the Board of Zoning Appeals finds that subparagraphs 1 through 8 of §158.172 (H)(5)(a) have been fully satisfied.

NOW therefore the Board of Zoning Appeals orders that:

A variance from §158.105 (C) of the City of Beavercreek Zoning Code to allow construction of said 6' fence, that would encroach 32.5' into the required 40' front yard setback, be approved with the following conditions:

1. The approved site plan shall be that which is stamp dated "Received April 8, 2016 City of Beavercreek Planning Department".
2. A Fence Zoning Permit must be approved by the Planning and Zoning Department prior to continuation of construction.

ACTION BY BOARD OF ZONING APPEALS

(Date)

Chairman

Lot 634

3845 Knollwood Dr.

FROM EDGE OF Road to the fence Post = 19'6"
MINUS 12' ROW = 7'6"

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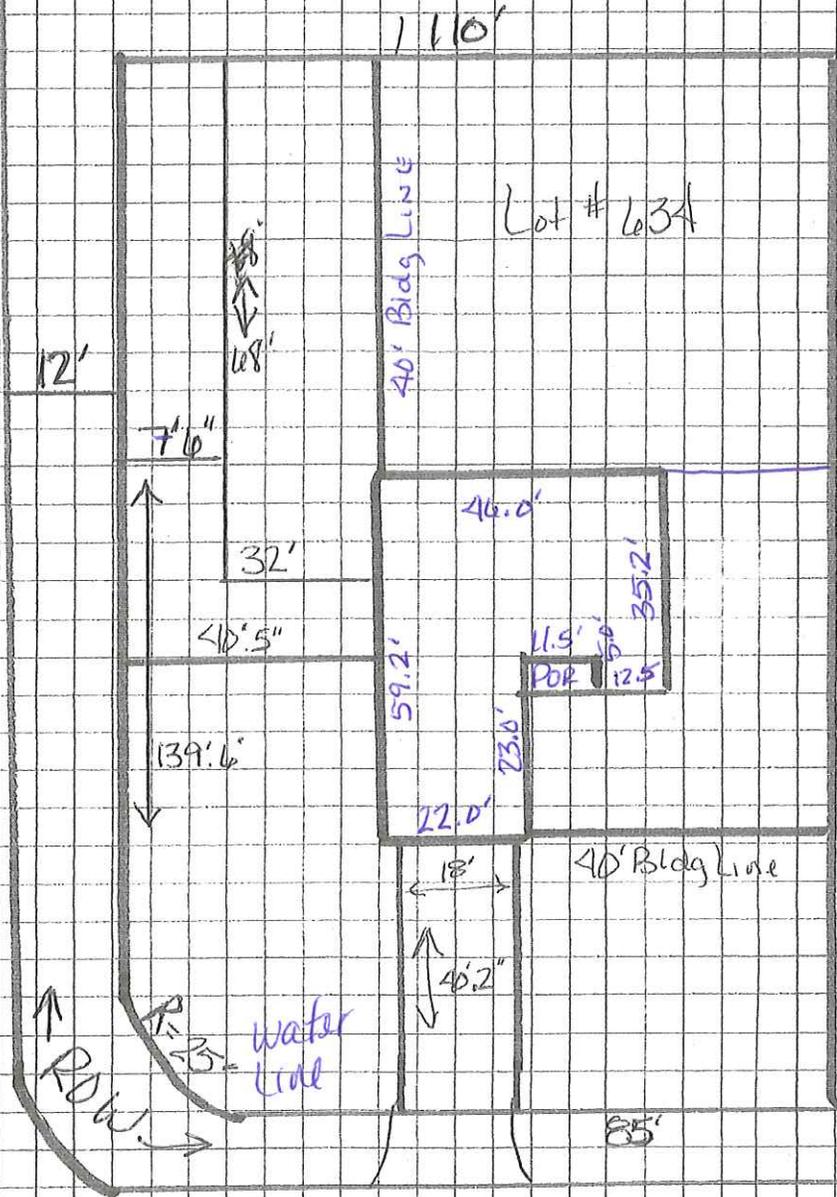
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RECEIVED

APR 08 2016

CITY OF BEAVERCREEK
PLANNING DEPARTMENT



0 0.005

April 6, 2016

JUSTIFICATION OF VARIANCE

SUBJECT PROPERTY AND OWNER INFORMATION

SUBJECT PROPERTY PARCEL ID #: B42000100150008400
PROPERTY ADDRESS: 3845 KNOLLWOOD DR, BEAVERCREEK, OHIO 45432
OWNERS NAME: SANDRA AND ALLEN RAY
OWNER ADDRESS: 3845 KNOLLWOOD DR, BEAVERCREEK, OHIO 45432
OWNER TELEPHONE: 937-620-3234
OWNER EMAIL: RUPITUP22@GMAIL.COM

GENERALLY

This proposal letter is to request and substantiate the approval of a Variance for a 6' PRIVACY FENCE at **3845 Knollwood Dr** in Beaver creek, Ohio per 158.105. This lot is a corner lot on Knollwood and Longview Rd. The area is located on the back (Southeast corner) of the lot.

The Variance requested is relatively minor, and as shown below clearly answers all of the questions set forth in the Variance Request and to support a finding in favor of the Variance. A variance from the Longview Street "front" yard is requested.

SPECIFICALLY

- A) There exist conditions and/or circumstances relating to the property that would create practical difficulties for the property owner if strict conformance to the requirements of the Zoning Code were required.**

The aforementioned property has several issues which include lack of security, lack of privacy and the topography of the lot. The lack of privacy comes from the fact that the elevation on Longview which runs North/South and is located on the East side of the property is higher than our yard. The grade (topography) of this lot was changed while building this home. (Photos Attached)

Prior to building this home, the lot was elevated and level. This lot, at one time, had a tennis court where the house now sits. The lot has a negative, downward grade which puts Longview Street much higher than the lot. Petitioner has no privacy with the current 6' fence which is abutted to the residence at this time. No other lot in the

vicinity has had the topography changed to where the road sits higher than the side of the home. The topography of the lot is beyond the petitioners' control.

The proposed fence's 6 foot height is requested in order to provide both a **sound barrier** and for increased **home security**. Both of these concerns are due to the proximity of **Longview Street** which faces the petitioners other "front" yard. No entry/exit doors or windows are located on the East side of the home which faces Longview Street. Longview Street is used as a throughway from Dayton-Xenia Rd to Kemp Rd and vice versa with cars/trucks speeding up and down this road at all hours. The requested Variance would provide a security barrier and reduce the noise level in the home. The current privacy fence is lower than Longview Street and does little to reduce the noise and does not provide a security barrier on the east side of the home.

The new fence must be located higher on the hill of the yard (closer to Longview St) so that the petitioner can have security and privacy on their property and in their home.

B) The variance to be granted is the minimum variance possible and other alternatives for resolving the conflict between the applicants plan and the requirements of the Zoning Code are impractical or infeasible.

This is true. The Petitioner is requesting that if the variance request is passed, it would allow for the construction of a 68-foot long by 32-foot wide privacy fence with the lot on this particular side of the residence being 139.60 feet long. The Petitioner has taken everything into consideration for the only allowable location under the Zoning Code is between the current structure and the neighboring home to the West (lot 635) where adequate room does not exist. The side yard does not allow for expansion of the privacy fence since the home on the next lot abuts closely to the property line and that resident has installed a privacy fence of his own.

The farther back the fence is towards the house, the less privacy and security the petitioner as home owners have, therefore making this impractical. This east side of the property is basically a "dead zone" and is therefore, unusable. The petitioner would like to be able to incorporate this section of the property and put it to use.

Other home owners do not have the same issue with the street being higher than their lot. They are able to use their yard while having the privacy and security that the petitioner is not afforded.

Approval of this variance would allow petitioner to use their yard to the fullest extent. It would also improve the look of the property and increase the value of the home if sold and also increase property values of homes in the area. To have the lot re-graded would be infeasible for the petitioner due to the costly price tag for the equipment, man hours, surveyors, etc. Since the residence has already been built, the re-grade would also be impractical. This is the only possible location for the privacy fence.

C) The granting of the variance will be in harmony with the general spirit, intent and purpose of this Zoning Code.

Approval of the Variance to the minimum front setback of 40 feet is impractical for security and privacy. Approving the Variance would allow the petitioner to maximize the development potential of the lot without having a negative impact on traffic safety or the ability of pedestrians to walk, bike or run on Longview Street. Approval of the request would permit the petitioner to erect a privacy fence on the property consistent in size and character with other privacy fences in the neighborhood, the city and the township.

The petitioner requests a Variance allowing a fence to be built on the Longview side of the residential property, following the property line with the 12 foot ROW (from edge of road inward, no curbs or sidewalks exist) taken into consideration and 7'6" between the ROW and the fence (totaling 19' 6"). This does not in any way encroach into the City's ROW.

The reasons for placing the fence where needed is primarily to give the petitioner a sense of security and privacy and to bring the property into **visual harmony** with the existing landscape and trees, allowing the fence to better blend in and visually "disappear" into the landscape

The petitioner's equally important need for this fence is to ensure harmony and peaceful coexistence with the neighbors, with regard to the petitioner's four dogs who need more room to exercise and play in which their current yard is quite small.

It is the *absolute* intent of the petitioner (for their own personal architectural preferences as well as the needs of the Zoning Administrator/Planning Commission) to create a fence that specifically blends in with not only the existing landscape and

vegetation but is also in complete harmony with the neighboring fence types and appearances. This residence has a tree line along the Longview Street side with mature trees.

d) The granting of the variance will not be injurious to surrounding properties and the general neighborhood or be otherwise detrimental to the public welfare.

On the contrary, the granting of the Variance will be beneficial to the general neighborhood.

e) The granting of the variance will not result in a deleterious change in the character of the community

No, the granting of the Variance will result in a beneficial improvement to the character of the neighborhood. The proposed fence shall be constructed of “dog ear” wood boards and shall be finished in the **identical** manner (paint/stain/varnish, etc) as several neighboring properties’ fences. The fence shall be located behind the current mature tree line on the East side of the lot which is not located within the ROW. Arbor Vitae will be planted on the North side of the lot which faces Knollwood Drive where trees do not exist and indigenous vegetation if the City prefers to further become harmonious and blend in with several neighboring properties’ fences. The construction of the fence behind the tree line will not create any line-of-sight issues, which is the primary reason for this type of regulation and will be barely visible behind the evergreen trees when planted. (Photos attached)

The fence **shall not** incorporate any “standout” features such as concrete pillars or visually attention-getting decorative protrusions and the proposed fence is desired, intended, and shall be built specifically to be unobtrusive and “low key”, blending in with the neighborhood.

There are quite a few other properties with double front yards in this neighborhood and within the City and Township of Beavercreek which have 6 foot privacy fences on what is normally considered the “side” yard of their property. As such, granting this Variance would not represent any unique or “special privilege” for the petitioner.

Petitioners’ privacy fence does not interfere with the intersection of Knollwood and Longview since it is set back approximately 120’ from the intersection.

The petitioner has spoken with neighboring property owners regarding the petitioners' request, and do have a petition signed by neighbors within a 500 foot radius stating that they had no opposition to the petitioners fence. Petitioner is keeping the fence in the rear portion of their lot. Approval of the request would not conflict with any other aspect of the City of Beavercreek Zoning Ordinance to their knowledge.

A 42" fence in the Longview Street side will NOT contain their 4 dogs. The 6' privacy fence will help to cut down on water runoff from Longview which would therefore stop the yard from washing out down the hill. Petitioner continually has water/mud standing in the bottom of their yard making it unusable. In June 2015, petitioners finished basement flooded. The petitioner had over 3" of standing water throughout the basement, which caused over \$12,000 damage to their home. The plumber was called since the sump pump broke. It was explained to petitioner by the plumber, that due to the road sitting higher than the home, the run off from Longview Street was like a river washing down the hill. The sump pump was not able to keep up with the excessive run off. The plumber stated that he had never in 30 years of business seen this part of a sump pump break. No other neighbor in the general vicinity to this property had an issue with their basements flooding.

f) The granting of the variance will not infringe upon the rights and quiet enjoyment of adjacent property owners and will not diminish property values, endanger the public safety or create a public nuisance.

Petitioners' fence will not cause any damage or harm to them, the neighbors or the flow of traffic which has increased over the years. Petitioners' privacy fence will not infringe upon anyone's rights or the enjoyment of the neighbors since the fence would be facing a public street. Petitioner is only asking for the same consideration that many other homeowners have asked for and received from the Planning and Zoning Department.

g) The granting of the variance is for a compelling reason and not simply because the applicant's plans conflict with the Zoning Code requirements when reasonable alternatives are available.

The compelling reasons is that this lot has two "front" yards when in fact most people consider the Longview side as a "side" yard. Further, the Longview Street side is the only area that will allow for an extension of a fence to increase the backyard area, increase safety and increase the security for the homeowners.

The petitioner has listed many compelling reasons showing the need for the privacy fence. Petitioner has all of the surrounding neighbors support with signatures in this endeavor.

h) The granting of the Variance is not solely for economic benefit to the applicant.

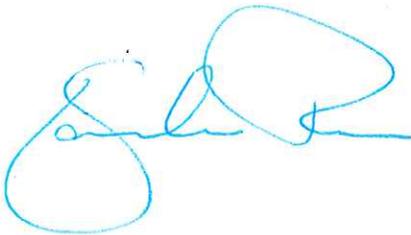
No economic gain will be had by the petitioner unless the home is sold in which the petitioner is not planning on doing. Granting the variance will only improve the condition of the residence and increase the enjoyment of the petitioners' home for many years to come.

Precedence has been set with the 14 homes that the petitioner has noted that do not have the same issues as the petitioner has, in Beavercreek and Beavercreek Township by allowing corner lots to have 6' privacy fences. The Petitioner, as of this time have spent almost \$1,000 towards this fencing and if they are denied, this will create an undue financial hardship.

No utilities (gas, electric, water or sewage) are located in this area per the utility companies.

Petitioner is asking that reasonableness, compassion, fairness and empathy, be the guiding words for this committee.

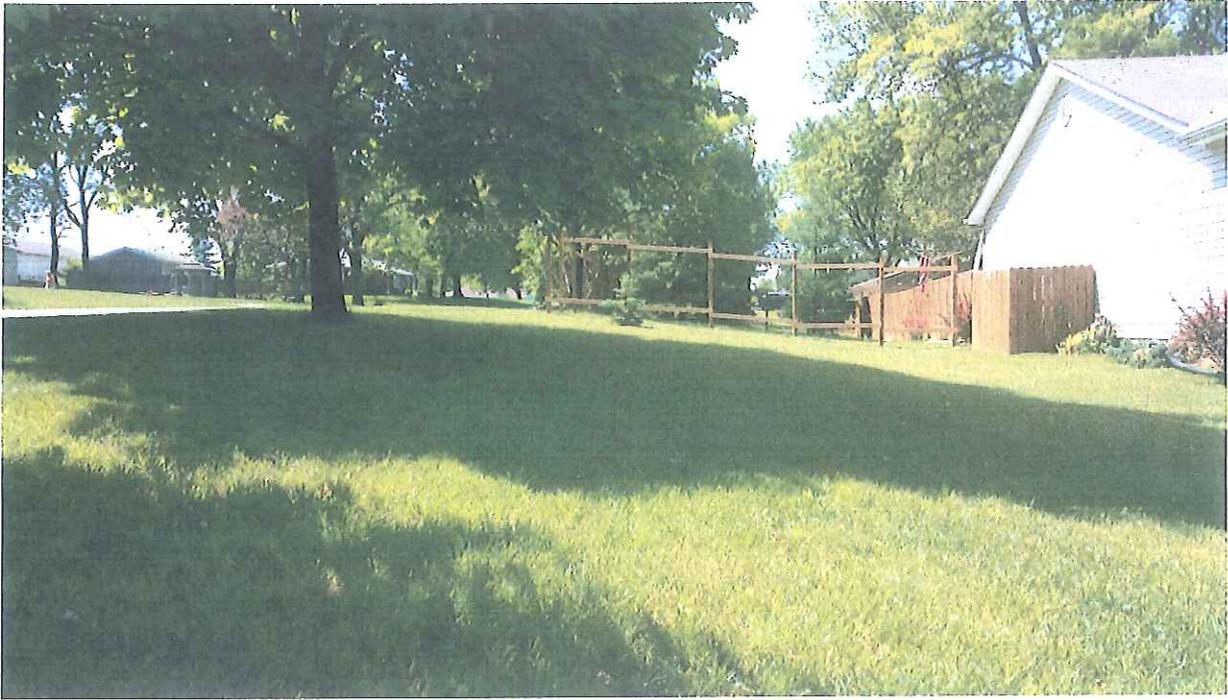
Thank you for your careful consideration of this information and this request.



Sandra Ray
3845 Knollwood Dr
Beavercreek, Ohio
937-620-3234
Email: rupitup22@gmail.com



3845 KNOLLWOOD CORNER OF LONGVIEW



THE GRADE OF OUR YARD DECREASES FROM EAST TO WEST



THE LOWER PART OF OUR YARD SHOWING THE NEGATIVE GRADING

