

RESOLUTION  
GRANTING  
APPEAL NO. 2020-13

WHEREAS, Aquarian Pools & Spa, 631 Loveland Miamiville Road, Loveland, OH 45140, appellant, on November 12, 2020, filed Appeal No. 2020-13 under Section 183 of the Zoning Resolution, seeking a variance from the literal enforcement of Section 352 of said Resolution as applied to the property at 9247 Cactus Lane, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on November 12, 2020, applied to the Symmes Township Zoning Inspector for a Zoning Certificate for the construction of an in-ground swimming pool within the side yard; and

WHEREAS, said Zoning Inspector, on November 12, 2020, acting upon said application and the plats and plans submitted, refused to issue said Certificate, the reasons being based upon the maps and regulations of the Zoning Resolution; and

WHEREAS, a public hearing was scheduled for said appeal on January 4, 2021, notice of such hearing was given by first class mail to parties of interest and also by publication in a newspaper of general circulation in the Township at least ten (10) days prior to the date of said hearing in accordance with Section 303.15 of the Ohio Revised Code; and

WHEREAS, Section 41 et seq. of the Zoning Resolution and the Symmes Township District Maps designate said premises to be in the "A" Residence District; and

WHEREAS, Section 352 provides, in relevant part, that swimming pools shall be permitted as an accessory use in all Residential Districts or any district with permitted residential uses provided, they are located behind the rear line of the principal structure and at least ten (10) feet from all property lines and that fixed lighting for these uses shall be located, screened, or shielded so that any adjacent residential lots are not directly illuminated; and

WHEREAS, according to testimony offered at the public hearing, the applicant is proposing to construct a fourteen (14) foot wide by thirty (30) foot long in-ground pool with associated concrete patio and fencing on the east side of the existing single-family home; and

WHEREAS, according to further testimony offered at the public hearing, the property is located on the south side of Cactus Lane and is accessed via a private driveway from the west which also provides access to three (3) other homes; and

WHEREAS, according to further testimony offered at the public hearing, the garage is located in the rear of the property but is attached to the home. Since the garage is attached to the home and considered part of the principal structure, the rear yard begins south of the southernmost edge of the garage. As proposed, the portion of the proposed pool which is located north of the southernmost edge of the attached garage is considered to be in the side yard necessitating the request for a variance; and

WHEREAS, according to further testimony offered at the public hearing, the proposed pool would not be visible from Cactus Lane and would not be highly visible from the shared driveway. The pool would be mostly visible from the property located to the east. However, a privacy fence exists which screens the properties; and

WHEREAS, according to further testimony offered at the public hearing the pool, could be moved further south into the rear yard. However, it would be more visible from the surrounding properties and closer to the home located to the south. In addition, moving the pool further to the south would push it into an existing playset area; and

WHEREAS, 184.6 empowers this Board to permit a variation in the yard requirements of any District where there are practical difficulties or unnecessary hardships in the carrying out of these provisions due to irregular shape of the lot, topographic or other conditions, provided such variation will not seriously affect any adjoining property or the general welfare; and

WHEREAS Section 185 provides, in exercising the above-mentioned powers, the Board may reverse or affirm, wholly, or partly, or may modify the order requirement, decision or determination

appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all powers of the Officer from whom the appeal is taken; and

WHEREAS, it is the consensus of this Board, after careful consideration of all the facts, testimony, and evidence submitted, that the literal enforcement of the strict application of Section 352 of the Zoning Resolution will result in practical difficulty to the appellant of the property in question; and

WHEREAS, the variation, in accordance with the following conditions, will not seriously affect any adjoining property owners or the general welfare; and

NOW, THEREFORE BE IT RESOLVED that upon consideration of the foregoing, the Symmes Township Board of Zoning Appeals does hereby grant a variance from the requirement of Section 352 of the Zoning Resolution in accordance with the authority granted in Section 184.6. Furthermore, the decision of the Zoning Inspector to deny the issuance of a zoning certificate for the reason that the application failed to comply with Section 352 of the Zoning Resolution is affirmed, but in accordance with the authority of Section 185, the Board of Zoning Appeals, having granted a variance as stated above, hereby determines that a zoning certificate may be issued to the applicant consistent with the terms set forth in this Resolution; and

SUBJECT TO THE FOLLOWING CONDITIONS:

1. That, the proposed in-ground swimming pool be constructed exactly as shown on the plats and plans submitted to this Board;
2. That, the proposed in-ground swimming pool not be relocated or enlarged without the approval of this Board;
3. That, the proposed in-ground swimming pool be maintained in a satisfactory condition at all times;
4. That, the proposed in-ground swimming pool comply in all other respects with the Zoning Resolution and the lawful requirements of the Hamilton County Building Commissioner;
5. That, the Zoning Certificate and Building permit (if required) for the proposed in-ground swimming pool be obtained within six months (6) months and all work be completed within one (1) year from the date of adoption of this Resolution;

BE IT FURTHER RESOLVED that all plats, plans, applications and other data submitted be and are hereby made a part of this Resolution.

ADOPTED at a regularly scheduled meeting of the Symmes Township Board of Zoning Appeals in session this 4th day of JANUARY 2021.

Mr. Fowler – ‘aye’, Ms. Harlow – ‘aye’, Mr. Havill – ‘aye’, Mr. Horvath – ‘aye’ and Mr. Wolfe – ‘aye’.

APPROVED: JANUARY 4, 2021

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Luanne C. Felter  
Zoning Secretary

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Jennifer Harlow, Board Chairperson