

RESOLUTION

GRANTING

APPEAL NO. 2013-18

WHEREAS, Mark Sutton, 9970 Bentcreek Drive, Loveland, OH 45140, appellant, on August 30, 2013, filed Appeal No. 2012-18 under Section 183 of the Zoning Resolution, seeking a variance from the literal enforcement of Sections 76.1-3 and 342.3 of said Resolution as applied to the property at 9970 Bentcreek Drive, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on August 30, 2013, applied to the Symmes Township Zoning Inspector for a Zoning Certificate for the construction of an accessory structure located in the front yard of the home on a corner lot; and

WHEREAS, said Zoning Inspector, on August 30, 2013, acting upon said application and the plats and plans submitted, refused to issue said Certificate, his reasons being based upon the maps and regulations of the Zoning Resolution; and

WHEREAS, a public hearing was scheduled for said appeal on October 7, 2013, a notice of such hearing was given by first class mail to parties in interest and also by publication in a newspaper of general circulation in the Township at least ten (10) days prior to the dates of said hearings 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 "B" Residence District; and

WHEREAS, Section 76.1-3 provides, in relevant part, that where a lot is located at the intersection of two or more streets there shall be a front yard on each street side of a corner lot except that buildable width of a lot of record shall not be reduced to less than forty feet; and

WHEREAS, Section 342.3 provides, in relevant part, that no accessory use or structure shall be located in the front or side yard and the total combined area of all accessory structures shall not occupy more than thirty (30%) percent of the required area of the rear yard; and

WHEREAS, according to testimony offered at the public hearing, the request is for variance approval to construct a freestanding gazebo in the front yard of the subject property; and

WHEREAS, according to further testimony offered at the public hearing, the property is located on the northeast corner of the Bentcreek Drive and Lebanon Road intersection, south of Carrousel Court; and

WHEREAS, according to further testimony offered at the public hearing, the applicant is proposing to construct a freestanding gazebo to the west of the existing home on a corner lot. The gazebo is 8-feet by 8-feet with an octagon shape and will be located on a paver stone circle; and

WHEREAS, according to further testimony offered at the public hearing, a large portion of the woods on the corner lot will remain to screen the gazebo from Lebanon Road and will provide a focal point along the entry to the subdivision; and

WHEREAS, according to further testimony offered at the public hearing, the proposed location of the gazebo would be in front of the front line of the existing home. The location is elevated slightly from the sidewalk and pavement of Bentcreek Drive and would be setback approximately 19 feet from the edge of the sidewalk; and

WHEREAS, according to further testimony offered at the public hearing, additional screening with evergreen or arborvitae trees is required in front of the gazebo to control visibility;

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 Sections 76.1-3 and 342.3 of the Zoning Resolution will result in practical difficulties 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 Sections 76.1-3 and 342.3 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 Sections 76.1-3 and 342.3 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 gazebo be located exactly as shown on the plats and plans submitted to this Board;
2. That, the proposed gazebo be screened with a minimum of three Arborvitae or Evergreen trees in front of the gazebo to limit the visibility from street;
3. That, the proposed gazebo comply in all other respects with the Zoning Resolution and the lawful requirements of the Hamilton County Building Commissioner;
4. That, the Zoning Certificate and Building permit (if required) for the proposed gazebo be obtained within six months (6) months and all work be completed within one (1) year from the date of adoption of this Resolution;
5. That, the proposed gazebo not be relocated or enlarged without the approval of this Board;
6. That, the proposed gazebo be maintained in a satisfactory condition at all times;

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 7th day of OCTOBER 2013.

Mr. Flagel – “aye,” Ms. Harlow – “aye”, Mr. Havill – “aye”, Mr. Misrach – “absent”, Mr. Ruehlmann – “aye”, Mr. Wolfe – “aye”.

JOURNALIZED: OCTOBER 7, 2013

Brian E. Elliff
Township Zoning Inspector

Ron Ruehlmann, Board Chairperson