

RESOLUTION

GRANTING

APPEAL NO. 2014-08

WHEREAS, Henry Mitchell, 559 North Wayne Avenue, Cincinnati, OH 45215, appellant, on April 22, 2014 filed Appeal No. 2014-08 with the Symmes Township Board of Zoning Appeals under Section 183 of the Zoning Resolution, seeking a variance from the literal enforcement of Section 104.3 of said Resolution as applied to the property at 8757 Harpers Point, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on April 22, 2014, applied to the Symmes Township Zoning Inspector for a Zoning Certificate for the construction of a maintenance garage with less rear yard setback than required; and

WHEREAS, said Zoning Inspector, on April 22, 2014, 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 held on said appeal on June 2, 2014, 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 "E" Residence District (with Subservient Retail); and

WHEREAS, Section 104.3 provides, in relevant part, that the rear yard regulations for dwellings shall be a depth of not less than thirty-five (35) feet; and

WHEREAS, according to testimony offered at the public hearing, the applicant is proposing to construct a single-story detached maintenance garage in the rear of an existing parking lot for the Harpers Point apartment complex; and

WHEREAS, according to further testimony offered at the public hearing, the property is located on the east side of Montgomery Road, south of East Kemper Road and north of the City of Montgomery corporation line; and

WHEREAS, according to further testimony offered at the public hearing, the proposed garage would be twenty-eight feet by thirty-two (32) feet with a maximum height of twelve and one half (12 ½) feet; and

WHEREAS, according to further testimony offered at the public hearing, the complex currently has a maintenance garage in the same area of the property. The additional garage would allow storage of items that currently do not fit into the existing garage; and

WHEREAS, according to further testimony offered at the public hearing, the garage would be constructed within an existing paved area and would result in the removal of four (4) existing parking spaces; and

WHEREAS, according to further testimony offered at the public hearing, the garage would be located twenty-seven (27) feet from the southern property line and would be constructed to match the architectural style of the existing apartment buildings; and

WHEREAS, according to further testimony offered at the public hearing, the development was constructed in 1974 prior to Symmes Township Zoning. The density for multi-family uses in the "E" District has since been reduced making the development non-conforming; and

WHEREAS, according to further testimony offered at the public hearing, the proposed detached accessory structure would be permitted by the Symmes Township Zoning Resolution were the property not subject to a previous BZA case that limited the setbacks and structures; and

WHEREAS, according to further testimony offered at the public hearing, the adjacent properties to the south are located in the City of Montgomery and contain single-family detached homes; and

WHEREAS, according to further testimony offered at the public hearing, an eight (8) foot privacy runs along the property line screening the proposed garage from view of the adjacent homes; 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 an irregular shape of the lot, topographic or other conditions, provided such variations 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 104.3 of the Zoning Resolution will result in practical difficulties to the owners 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 104.3 of the Zoning Resolution in accordance with the authority granted in 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 104.3, 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 garage structure not exceed twenty (28) feet by thirty two (32) feet in size and the roof not exceed twelve and one half (12 ½) feet high. The roof pitch may not be higher than four twelve (4/12);
2. That, lights may not be placed on the south side of the proposed garage structure;
3. That, three (3) pine trees approximately six (6) feet tall must be planted between the garage area and the walkway as a buffer;
4. That, the proposed garage structure remain exactly as shown on the plats and plans submitted to this Board;
5. That, the proposed garage structure not be relocated or enlarged without the approval of this Board;

6. That, the proposed garage structure be maintained in a satisfactory condition at all times;
7. That, the proposed garage structure comply in all other respects with the Zoning Resolution and the lawful requirements of the Hamilton County Building Commissioner;
8. That, the Zoning Certificate and Building permit (if required) for the proposed garage structure be obtained within sixty (60) days and all work be completed within six (6) months 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 2nd day of June.

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

JOURNALIZED: JUNE 2, 2014

Brian E. Elliff
Township Zoning Inspector

Todd Flagel, Vice-Chairperson