

RESOLUTION

DENYING

APPEAL NO. 2017-15

WHEREAS, M. Zack Hohl, attorney, 312 Walnut Street, Suite #1800, Cincinnati, OH 45202, on behalf of appellant/owner Alice Kittredge on August 7, 2017, filed Appeal No. 2017-15 under Section 183 of the Zoning Resolution, seeking a variance from the literal enforcement of Sections 41, 82, 151, 152, 153, and 281 of said Resolution as applied to the property at 10020 Lincoln Road, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant applied to the Symmes Township Zoning Inspector for a Zoning Certificate for the restoration of a nonconforming use that has been discontinued for more than two (2) years; and

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

WHEREAS, public hearings were scheduled for said appeal on September 11, 2017 and October 2, 2017, notice of such hearings were 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 519.15 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 "C" Residence District; and

WHEREAS, Sections 82 and 82.11 provide, in relevant part, that a building or premises shall only be used for the following purpose: single family dwellings; and

WHEREAS, Section 151 provides, in relevant part, that the lawful use of any dwelling, building or structure and of any land or premises as existing and lawful at the time of enactment of this Resolution thereto, may be continued although such use does not conform with the provisions of this Resolution. If no structural alterations are made a nonconforming use of a building may be changed to another nonconforming use of the same or of a more restricted classification; and

WHEREAS, nonconforming use is defined in Section 31.3-146 of the Zoning Resolution as any use lawfully being made of any land, building, or structure on the effective date of these regulations or any amendment thereto rendering such use nonconforming which does not comply with all of the regulations of this Resolution or any amendment thereto; and

WHEREAS, Section 152 provides, in relevant part, that whenever the use of any dwelling, building or structure and of any land or premises becomes nonconforming through an Amendment of this Resolution such use may be continued and, if no structural alterations are made, it may be changed to another nonconforming use of the same or of a more restricted classification; and

WHEREAS, Section 153 provides, in relevant part, that in the event that a nonconforming use of any dwelling, building or structure and of any land or premises is voluntarily discontinued for two (2) years or more, any future use thereof shall be in conformity with the provisions of this Resolution; and

WHEREAS, the appellant appeared before the Board of Zoning Appeals on September 11, 2017 for approval of a nonconforming use. However, the meeting was continued at the request of appellant to October 2, 2017; and

WHEREAS, according to further testimony offered at the public hearing held on October 2, 2017, the appellant is requesting approval to reestablish the expired legal nonconforming use of the existing structure as a two (2) family dwelling with interior alterations and that the use was not voluntarily discontinued; and

WHEREAS, according to further testimony offered at the public hearing, the property is located on the northeast corner of the intersection of Lincoln Road and Clement Street and is situated in the middle of a residential district; and

WHEREAS, according to further testimony offered at the public hearing, the building was used as a general store in the 1800s with an operating railroad depot located across the street; however, the use was discontinued prior to adoption of Zoning in Symmes Township; and

WHEREAS, according to further testimony offered at the public hearing, the previous owner of the property was approved for a nonconforming use in 1950 to allow the structure to be used as a two (2) family dwelling. The applicant states that the use should be permitted to continue because the structure was built as a two (2) family residence and was never intended to become a single family home. Also, the addition of the second unit was constructed in such a way that a thick brick wall separates the two (2) units and it is not feasible to connect the two (2) units to allow conversion to a single family dwelling. The applicant also referred to Section 31.3-226 of the Zoning Resolution which defines “use” as “The purpose of activity for which land or any structure thereon is designed, arranged, or intended, or for which it is occupied or maintained.” Therefore the applicant stated that the property had been continuously maintained as multi family residence and therefore they did not voluntarily discontinue the use. However, there was testimony that the property was purchased by appellant in 2009 with knowledge that the property had been vacant. The structure had been vacant prior to the purchase and since the date of purchase which is for more than two (2) years and has lost the legal nonconforming status to operate as a two (2) family. Appellant admitted that the property had not been rented since 2000; and

WHEREAS, according to further testimony offered by appellant’s daughter that after purchasing the property the intent was to work on appellant’s residence located on the property then move onto working on the rental property and that it was costly and labor intensive. There was further testimony that the property has no value apart from its rental income potential; and

WHEREAS, according to further testimony offered at the public hearing, the applicant applied to the Board of Zoning Appeals in 2016 for restoration of the nonconforming use for two (2) two (2) bedroom apartment rentals and to approve the use of the storefront portion of the building for an antique shop (Case 2016-11). At a public hearing on November 7, 2016, the applicant withdrew the case due to opposition and was going to apply for a zone change; and

WHEREAS, according to further testimony offered at the public hearing, and documents presented related to the subject property, including documents from the Hamilton County Auditor and the mortgage company all refer to the property as a single family residence and not multi-family. The property was marketed and sold as a single family residence. In addition, property taxes have been paid based upon the classification as a single family property; and

WHEREAS, 184.8-7 empowers this Board to allow the restoration on a nonconforming use damaged by fire, explosion, Act of God, or the public enemy to the extent of more than sixty percent (60%) of its reproduction value; and

WHEREAS, Section 184.8-9 provides, in exercising the above mentioned powers, the Board can grant the extension of a nonconforming use or building upon a lot or tract of land occupied by such use or building, where such extension is necessarily incident to the existing use, provided, however, that the floor area of such extension or extensions shall not exceed in all fifty percent (50%) of the floor area of the existing building or buildings devoted to a nonconforming use on the effective date of this Resolution and provided, further, that such extension or extensions shall be undertaken within five (5) years of the effective date of this Resolution; and

WHEREAS, after discussion and after careful consideration of all the facts, testimony, all other evidence and the applicable provisions of the Zoning Resolution and relevant law, the proposed plan does not comply with standards and conditions set forth in the Zoning Resolution and the appellant has failed to show unnecessary hardship; and therefore the request for use variance is hereby denied; and

WHEREAS, on October 2, 2017, a motion was made by Mr. Wolfe, which was seconded by Mr. Ruehlmann, to deny the request for a use variance and the reestablishment of the expired legal nonconforming use of the existing structure as a two family dwelling and a roll call vote was as follows:

Mr. Fowler – ‘aye’, Mr. Misrach – ‘aye’, Mr. Ruehlmann – ‘aye’, and Mr. Wolfe – ‘aye’.

NOW, THEREFORE BE IT RESOLVED that upon consideration of the foregoing, the Symmes Township Board of Zoning Appeals does hereby deny the appeal for a variance and for the reestablishment of a nonconforming use of the existing structure as a two (2) family dwelling in accordance with the authority granted in the Zoning Resolution and does hereby determine that a request for variance and Zoning Certificate may not be issued to the applicant consistent with the terms set forth in this Resolution; and

BE IT FURTHER RESOLVED, that all plats, plans, applications, minutes of the public hearing and other documents and 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 6th day of NOVEMBER 2017.

Mr. Fowler – ‘aye’, Mr. Misrach – ‘aye’, Mr. Ruehlmann – ‘aye’, and Mr. Wolfe – ‘aye’.

APPEAL DENIED: NOVEMBER 6, 2017

Luanne C. Felter
Township Zoning Secretary

Donald Misrach, Board Chairperson