

RESOLUTION

GRANTING

APPEAL NO. 2018-10

WHEREAS, Robert S. Lucke, Robert S. Lucke Group, 8825 Chapel Square Drive, Suite B, Cincinnati, OH 45249, appellant, on August 17, 2018, filed Appeal No. 2018-10 under Section 183 of the Zoning Resolution, seeking a variance from the literal enforcement of Section 342.1 of said Resolution as applied to the property at 9541 Lakeside Drive, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on August 17, 2018, applied to the Symmes Township Zoning Inspector for a Zoning Certificate for the construction of a gazebo in the common area of the new subdivision; and

WHEREAS, said Zoning Inspector, on August 17, 2018, 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, a public hearing was scheduled for said appeal on September 10, 2018, 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 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 342.1 provides, in relevant part, that no accessory use or structure shall be approved, established, or constructed before the principal use is approved in accordance with these regulations; and

WHEREAS, according to testimony offered at the public hearing, the appellant has constructed a fourteen (14) foot by fourteen (14) foot and nine (9) foot high gazebo on an existing lot of record within the Lakeside Estates subdivision without the required zoning certificate; and

WHEREAS, according to further testimony offered at the public hearing, the gazebo is located on a platted parcel of land identified as an 'open space' tract near an existing pond that is used for detention for the development. The open space tract contains landscaping features and a walking trail that leads to the gazebo; and

WHEREAS, according to further testimony offered at the public hearing, the gazebo is considered an accessory structure since it is located on a platted parcel of land where there is no principal structure. Therefore, a variance is required. If the development was approved as part of a Community Unit Plan (CUP) a gazebo or other subdivision amenities located on open space tract could have been permitted as part of the overall plan approval; and

WHEREAS, according to further testimony offered at the public hearing, the gazebo is located in an area that does not have a negative effect on the surrounding properties; and

WHEREAS, according to further testimony offered at the public hearing, the lot will not likely be built upon in the future since is owned and maintained by the Homeowner's Association; and

WHEREAS, according to further testimony offered at the public hearing, Section 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 342.1 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 Section 342.1 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 342.1 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 gazebo shall be the only accessory structure permitted on the platted parcel of land;
2. That, the gazebo shall not be relocated or enlarged without the approval of this Board;
3. That, the gazebo shall be maintained in a satisfactory condition at all times;
4. That, the Zoning Certificate for the gazebo shall be obtained within six months (6) months from the date of adoption of this Resolution;
5. That, the gazebo shall comply in all other respects with the Zoning Resolution and the lawful requirements of the Hamilton County Building Commissioner;

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 10th day of SEPTEMBER 2018.

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

JOURNALIZED: SEPTEMBER 10, 2018

Luanne C. Felter
Township Zoning Secretary

Ronald Ruehlmann, Board Chairperson