

RESOLUTION
DENYING
APPEAL NO. 2020-09

WHEREAS, Kevin and Julie Carnes, 11988 Timberlake Drive, Cincinnati, OH 45249, appellant, on June 5, 2020, filed Appeal No. 2020-09 under Section 183 of the Zoning Resolution, seeking a variance from the literal enforcement of Sections 342.3 and 351.3 of said Resolution as applied to the property at 11988 Timberlake Drive, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on June 5, 2020, applied to the Symmes Township Zoning Inspector for a Zoning Certificate for the construction of an outdoor fireplace in the side yard; and

WHEREAS, said Zoning Inspector, on June 5, 2020, 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 August 3, 2020 with notice of such hearing 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 342.3 provides, in relevant part, that no accessory use or structure shall be located in the front or side yard; and

WHEREAS, Section 351.2-1 provides, in relevant part, that on parcels of less than one (1) acre, no detached structure shall be closer than five (5) feet from any property line; and

WHEREAS, according to testimony offered at the public hearing, the appellant constructed an outdoor fireplace on the southeast corner of the home within the side yard area without obtaining a zoning permit. The fireplace is located four point three nine (4.39) feet from the southern property line at its closest point and extends off an existing concrete patio; and

WHEREAS, according to further testimony offered at the public hearing, the property is located on the east side of Timberlake Drive south of Heritage Drive; and

WHEREAS, according to further testimony offered at the public hearing, most of the homes on this street were built with the frontages facing Timberlake Drive. However, this home was built at an angle with the front door facing northeast and the back of the home facing southwest towards Timberlake Drive. Since the space between the home and Timberlake Drive is technically the front of the home and the space where the fireplace is proposed is the side of the home the accessory structure is not permitted; and

WHEREAS, according to further testimony offered at the public hearing, the home is situated higher than the street below and contains two wood decks and an existing concrete patio that abuts the fireplace. A significant number of trees and vegetation exists screening the decks and fireplace from view; and

WHEREAS, according to further testimony offered at the public hearing, the adjacent home at 11980 Timberlake Drive sits significantly lower than the appellant's home with the fireplace located four point four (4.4) feet from the neighbor's property line; and

WHEREAS, according to further testimony offered at the public hearing, the noise and smoke generated from the fireplace directly affects the neighbor. The fireplace also poses a potential safety hazard to the neighbor's home; 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 Sections 342.3 and 351.3 of the Zoning Resolution will not result in practical difficulties to the appellant of the property in question; and

NOW, THEREFORE BE IT RESOLVED that upon consideration of the foregoing, the Symmes Township Board of Zoning Appeals does hereby deny the requested variance from the requirement of Sections 342.3 and 351.3 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 342.3 and 351.3 of the Zoning Resolution is affirmed; and

ADOPTED at a regularly scheduled meeting of the Symmes Township Board of Zoning Appeals in session this 3rd day of AUGUST 2020.

Mr. Fowler – 'nay', Ms. Harlow – 'aye', Mr. Horvath – 'aye', Mr. Havill – 'nay', and Mr. Wolfe – 'aye'.

JOURNALIZED: AUGUST 3, 2020

Luanne C. Felter
Township Zoning Secretary

Jennifer Harlow, Board Chairperson