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City of Dublin, Ohio
Planning Division
Board of Zoning Appeals
5200 Emerald Parkway
Dublin, Ohio 43017

RE: Application for Area Variance
Address: 9376 Nicholson Way, Dublin, Ohio 43017

Dear Staff,

I represent David and Beryll Hopkins in regard to the pergola installed at the rear of their property. The Hopkins purchased this pergola from Share Tree Cool Living, LLC and believed that the supplier and installer would have applied for a building permit for its installation if required. They were informed by the installer that a permit was not required and relied on his "expert" opinion.

The Hopkins applied for their HOA approval, which was granted, even though it apparently violated their deed restrictions. They have subsequently indicated that they would follow the city's direction as to any approvals.

Shortly after its installation, the Hopkins received a Notice of Non-Compliance from Zoning Inspector Brian Martin indicating that there was no permit applied for the exterior improvements. The immediately submitted for a building permit on July 2, 2021 which was denied indicating that the pergola, which was being considered a structure, was not allowed to encroach into the open rear yard space of the property.

This pergola is placed above an existing concrete patio which is permitted to encroach into the rear yard by 5 feet per DCC 153.071(B)(1)(c). The pergola extends by its overhang 1 foot further for a total of 6 feet into the rear yard. DCC 153.071(B)(1)(b) permits eaves, cornices, window sills and belt courses to project into the required yard by up to two feet so with that exception, the pergola would encroach 5 feet into the required yard.

This pergola is visibly and physically open, having 50 percent of its vertical surface area open to light and air, on all sides and does not have a roof. It has open trellis structure above that is also more than 50% open relative to permanent elements and is provided with retractable awnings between the trellis elements.

The Hopkins would request that they be granted a variance to the provisions of DCC 153.071(B)(1) as it relates to the pergola as it was not their intention to violate the zoning code or building code and believed they were complying with all requirements. The HOA approved the project prior to its actual installation notwithstanding that it was encroaching into the rear yard. Had they denied the approval due to the encroachment, the pergola would not have been

installed as it presently exists. The Contractor further exacerbated the situation by not applying for building permits which would have at least given notice of the Zoning Code requirements.

The Hopkins property has an eastern facing rear yard that abuts City of Dublin dedicated parkland. The location of the pergola allows a shade system during the morning and afternoon hours at their existing patio and does not visually detract from the views and vistas of the adjacent properties or the city parkland.

1. This site is unique in its configuration compared to most of the other lots in the subdivision that would have a larger available area for the construction of the pergola. Additionally given the additional open space created by the City of Dublin Parkland at the rear of the property, there is no adverse effects on another parcel that would typically be abutting the rear property line.
2. The pergola is 20 feet from the rear property line which does not impact adjacent property owners. The adjacent neighbors home sits 5 feet closer to the rear property line than the Hopkins.
3. The pergola installation, while purchased by the Hopkins, was performed by the supplier who failed to secure permits. Additionally, the HOA who would have had the opportunity to flag the concern at the time of the application, failed to do so.
4. Given the designated City Parkland behind the Hopkins parcel, the technical paper lines of setbacks does not impact visually the community or any neighbors to the rear of their property as the Parkland area provides a further visual buffer. The granting of the variance will not cause a substantial adverse effect to the property or any improvements in the vicinity or MATERIALLY impair the intent and purposes of the Dublin Zoning Code. The Hopkins propose as a condition that no vertical retractable shades will be installed on the pergola as a commitment that the openness of the element remains paramount.
5. The granting of the variance would not grant on the Hopkins any special privileges that other property owners are currently enjoying in the neighborhood and community. The adjacent property owner to the south has a patio and a retractable awning that is 16 feet from the rear property line and therefore sits closer to the rear property line than the Hopkins pergola. That neighbor was issued a permit for a 6' patio at the rear of their home that sits 26 feet from the rear property line which would be in compliance with DCC 153.071(B)(1)(c). That neighbors application indicates a request for a 10' deep patio, the applicant being Councilman John Reiner. While the approval was for a 6' deep patio, it's clear that a 10' deep patio was installed, with retractable awning, and the city has not enforced the same zoning code provisions against that property owner. If the patio was installed at 6' with the 26' building distance from the rear property line, it would generally align with the location of the Hopkins pergola. Clearly, their patio and awning is at least 4 feet further into the rear setback.
6. No governmental services are impacted by the granting of this variance.
7. The only method of eliminating the practical difficulty would be for the City to dedicate approximately 6 feet of the parkland at the rear of the parcel to the Hopkins, we don't believe that would be considered by the City. It should be noted that the adjacent property owner has attempted to acquire part of this parkland by moving the white stakes back approximately 5-6 feet from his actual rear property line, which I'm sure was to cause confusion in the city's enforcement regarding the patio.

Sincerely,



Thomas M. McCash