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October 21, 2021

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

Attn: Tammy Noble, Planner

Dear Ms. Nobile,

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.

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 required to encroach into the rear yard by 5 feet per DCC 153.071(B)(1)(c) and extends by its overhang 1 foot further for a total of 6 feet into the rear yard.

This pergola is open on all sides and does not have a roof and is similar to a fence or a wall which is permitted under DCC153.071(B)(1)(a) to encroach into a required yard. I would note that that section does not indicate a maximum height of the fence or wall tht would be permitted in a rear yard, only the front yard.

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 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 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.
3. We believe that granting a variance to allow a pergola to be considered a fence/wall would allow others the same opportunity and would not convey any special privilege on the applicant.
4. A clarification of the zoning code to permit these types of elements could be considered.
5. No governmental services are impacted by the granting of this variance.
6. 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.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas M. McCash', with a stylized, cursive flourish extending to the right.

Thomas M. McCash



June 29, 2021

David and Beryll Hopkins
9376 Nicholson Way
Dublin, OH 43017

Original Notice

7/2/21 Submitted site plan and pictures of project.
7/6/21 Initial submission accepted
7/12/21 Revision requested

Notice of Non-Compliance: No permit for exterior improvements

Dear Mr. and Mrs. Hopkins:

City staff recently received information regarding work on your property. An inspection found your property in violation of the City of Dublin Zoning Regulations due to its lack of an approved permit.

Please draw to scale the footprint of the patio, pergola and any other new structures on the attached site plan drawing; this will be uploaded as a PDF during the submittal process. Please also include a picture of the pergola and state the height. This information must be received no later than July 14th, 2021 or the case will be forwarded for code enforcement.

To apply for a Certificate of Zoning Plan Approval, please register an account and apply for a Certificate of Zoning Plan Approval – Residential application through our online ACA Portal website (link here: <https://aca-prod.accela.com/dublinoh/default.aspx>).

Feel free to contact Mike Kettler, Planning Technician at (614) 410-4650, mkettler@dublin.oh.us, with any questions or concerns related to the submittal process. If the pergola is over 200 square feet or attached to the house, a separate building permit is required. Contact the Building Department at 614-410-4670 regarding submittal requirements.

Respectfully yours,

Brian Martin
Zoning Inspector
bmartin@dublin.oh.us

Enclosure



July 12, 2021

Application: RALT-21-01368
Address: 9376 Nicholson Way

Planning Review Comments

1. **Dublin Zoning Code 153.071 (B) Lot and yard space preserved**

The lot area and yard space required for a use or structure shall be maintained during its life and shall not be reduced below the minimum requirement, occupied by another use or structure, or counted as yard space for any other use or structure.

Dublin Zoning Code 153.071 (B)(1) Open Yards required

The yard space required for a use or structure shall, during its life, remain free of all uses or occupancy except as follows:

- (a) Fences, walls and landscaping shall be permitted in any required yard, or along the edge of any yard, provided that no fence or wall between a street and a front building setback line is more than three feet in height, except as required in 153.130 through 153.138 or in accordance with an approved final development plan of a Planned Development District.
- (b) Eaves, cornices, window sills and belt courses may project into any required yard a distance not to exceed two feet.
- (c) Open and uncovered porches may project beyond the front building setback line or into a required rear yard a distance not to exceed five feet.
- (d) Driveways shall be setback at least three feet from a side lot line or adjacent to the side lot line where a single common drive is provided for two adjoining lots as listed in § 153.210.

Revise trellis location so that it does not extend into the required rear yard of 25 feet

Reviewed and signed

Brad Conway

Brad Conway, AIA
Residential Plans Examiner
(614) 410-4613 bconway@dublin.oh.us