
**MINUTES OF SYMMES TOWNSHIP BOARD OF ZONING APPEALS
REGULAR MEETING**

MAY 5, 2014

The meeting was called to order at 7:00 p.m. Members of the Commission present were: Mr. Flagel, Mr. Havill, Mr. Misrach, Mr. Ruehlmann and Mr. Wolfe.

Also present were: Bryan Snyder - Hamilton County Rural Zoning and Luanne Felter - Symmes Township.

All persons wishing to testify before the Board were sworn.

PUBLIC HEARINGS

MR. WOLFE convened the public hearing for BZA 2014-06 for the property located at 9565 Loveland Madeira Road.

MR. SNYDER stated that the request is to allow the construction of a new single family home in a "C" Residence District. The parcel is located on the north side of Loveland Madeira Road, east of Humphrey Road. The property was formerly zoned and used for commercial purposes but was amended to "C" Residence in 1992. An existing building on the site has not been utilized since that time and will be removed. The lot is triangular shaped with frontage onto Loveland Madeira Road and backs up to a private driveway serving four existing single family homes. A vegetated buffer exists between the parcel and the private drive and will not be removed.

The applicant would like to build a 2,000 square foot ranch on the property. At the time the plans were submitted it contained a two car garage with access from the private driveway but has since been amended to include a three car garage with access from Loveland Madeira Road. The corner of the proposed home will be outside the buildable area requiring a variance of 6.79 feet from the northern property line where a 30-foot rear yard setback is required. He suggested the home be turned 180 degrees to reduce the amount of setback required. Changing the plans from a three car garage to a two car garage would also reduce the amount of setback.

JEFF & CAROL SCHUBELER (6341 Kugler Mill Road 45236) stated that they would like to build a ranch style home for function ability and to accommodate their family. The location of the site is convenient to both their places of work. A three car garage is necessary since parking will be limited on site. Access to the home will be obtained from Loveland Madeira Road and not from the access driveway behind them. They feel that if the home is turned it will look awkward and they will not be able to have a backyard area. The vegetated buffer provides privacy from the adjacent property owners.

MR. MISRACH wanted to know who owned the lot.

MR. SCHUBELER stated that the property is owned by Stonehedge Interests LLC but he plans to purchase the lot if the variance is approved.

WILLIAM BRANDT NAKO (9571 Loveland Madeira Road, 45249) stated that he was not aware of the hearing until his neighbor told him about it. He believes that the construction will have a negative environmental impact on the neighborhood and decrease

his property value. He agrees that the existing building is an eyesore but the proposed home is too large for the lot. He noted that there will be no buffer in the winter.

MR. WOLFE noted that the Board's role is to discuss the variance only. He wanted to know if the applicant could have access to the private drive if the home was turned 180 degrees.

MR. NAKO stated that he could not support that idea and does not believe his neighbors would either.

ALEX AND CAROL ARONIS (9575 Loveland Madeira Road 45140) stated that their house is located directly behind the lot and feel that the proposed home will protrude too close to their property line. They cut back some of the vegetation to make room for additional parking and will have a clear view of the house.

MRS. SCHUBELER noted that the lot could accommodate a 25,000 square-foot two-story home but feels it would be more intrusive. She thinks the ranch style home will look a lot nicer on the lot and work out better for her family.

MR. SNYDER noted that the Board got an email from Cindy Shuman stating she is against the variance for personal reasons. He reminded the Board that private testimony is not allowed. Unless Ms. Shuman testifies in the open the email must be disregarded. Ms. Schuman stated that she preferred not to testify. The Board agreed to rescind the email.

MR. FLAGEL stated that a 24-foot variance for a rear yard setback is a substantial deviation from the Zoning Code. He does not feel he can support this especially since the home will be five feet from Mr. & Mrs. Aronis's property line.

MR. HAVILL stated that the Board should retain the integrity of the Zoning Code.

MR. WOLFE noted that the house is way too big for the lot. He is also concerned that the plans for the home keep getting bigger as the process goes along. He suggested that the Board grant a continuance so the applicant can discuss other options with the builder and talk to the neighbors.

MR. FLAGEL noted that any change in plans will have to be resubmitted.

MR. HAVILL did not support a continuance and thought the Board should vote on the plans as submitted.

MR. FLAGEL made a motion to consider the following:

RESOLUTION
GRANTING
APPEAL NO. 2014-06

WHEREAS, Jeff & Carol Schubeler, 6341 Kugler Mill Road, Cincinnati, OH 45236, appellant, on March 27, 2014 filed Appeal No. 2014-06 with the Symmes Township Board of Zoning Appeals under Section 183 of the Zoning Resolution, seeking a variance from the literal enforcement of Section 84.3 of said Resolution as applied to the property at 9565 Loveland Madeira Road, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on March 7, 2014, applied to the Symmes Township Zoning Inspector for a Zoning Certificate for the construction of a new single family residence with less rear yard setback than required; and

WHEREAS, said Zoning Inspector, on March 27, 2014, acting upon said application and the plats and plans submitted, refused to issue said Certificate, his reasons being based upon the maps and regulations of the Zoning Resolution; and

WHEREAS, a public hearing was held on said appeal on May 5, 2014, notice of such hearing was given by first class mail to parties of 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 "C" Residence District; and

WHEREAS, Section 84.3 provides, in relevant part, that there shall be a rear yard with a depth not less than thirty (30) feet; and

WHEREAS, according to testimony offered at the public hearing, the applicant is requesting approval to construct a new single family home on a triangular shaped lot that would extend twenty four (24) feet into the required rear yard setback; and

WHEREAS, according to further testimony offered at the public hearing, the property is located on the north side of Loveland Madeira Road, east of Humphrey Road and contains approximately zero point three seven (0.37) acres; and

WHEREAS, according to further testimony offered at the public hearing, the property was formerly zoned and used for commercial purposes but was amended to "C" Residence in 1992; and

WHEREAS, according to further testimony offered at the public hearing, a vacant dilapidated commercial building currently exists on the property but will be removed for the single family home; and

WHEREAS, according to further testimony offered at the public hearing, a private driveway serving four existing single-family homes is located behind the property and separated by a twenty (20) foot vegetated buffer that will not be removed; and

WHEREAS, according to further testimony offered at the public hearing, the proposed home would be a single-story ranch with approximately two thousand (2,000) square feet of living space and include a basement and a three car garage; and

WHEREAS, according to further testimony offered at the public hearing, the applicant is requesting the ranch style home for function ability and needs a three car garage due to limited parking on the site; and

WHEREAS, according to further testimony offered at the public hearing, the home could be reconfigured differently on the lot as a way to reduce the setback area but would not provide a backyard area for the family; 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 an irregular shape of the lot, topographic or

other conditions, provided such variations 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 84.3 of the Zoning Resolution will result in practical difficulties to the owners 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 84.3 of the Zoning Resolution in accordance with the authority granted in 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 84.3, 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 proposed single family home remain exactly as shown on the plats and plans submitted to this Board;
2. That, the proposed single family home not be relocated or enlarged without the approval of this Board;
3. That, the proposed single family home be maintained in a satisfactory condition at all times;
4. That, the proposed single family home comply in all other respects with the Zoning Resolution and the lawful requirements of the Hamilton County Building Commissioner;
5. That, the Zoning Certificate and Building permit (if required) for the proposed single family home be obtained within six (6) months and all work be completed within one (1) year from the date of adoption of this Resolution;

BE IT FURTHER RESOLVED that all plats, plans, applications and other data submitted be and are hereby made a part of this Resolution.

MR. RUEHLMANN seconded the motion and the roll call vote was as follows:

Mr. Flagel – ‘nay’; Ms. Harlow – ‘absent’; Mr. Havill – ‘nay’; Mr. Misrach – ‘nay’; Mr. Ruehlmann – ‘nay’; Mr. Wolfe – ‘nay’.

MR. WOLFE convened the public hearing for BZA 2014-07 for the property located at 10776 Loveland Madeira Road.

MR. SNYDER stated that the applicant is requesting approval to operate a garden center on the site of LA Supply annually from March 15th through July 15th to sell plants and flowers. The property is located on the south side of Loveland Madeira Road, just west of Lebanon Road. The property is currently used as a landscaping business with large bins for stone, rock, gravel, and mulch and contains a construction landfill that is in the process of closing. The garden center would contain a 960 square-foot temporary greenhouse structure and a large table display area. It would be located in the gravel parking lot at the front of the property which is situated between two access drives serving LA Supply.

The applicant is requesting signage over the main entrance of the greenhouse, a temporary freestanding sign along the roadway, and a temporary "A" frame sign indicating "OPEN" to be placed along the road.

The applicant installed the greenhouse and signage without approval of this Board and was issued a stop work order. He opened up the business again and was issued a second notice. I drove by the business this past weekend and noticed that the business was closed. If the variance is approved, the applicant will need to obtain a transient vendor permit from the Township.

MR. HAVILL wanted to know what the signage requirements were for the subject property.

MR. SNYDER stated that there is a 40-square foot sign at the entrance by the permanent tenant. No additional signage would be allowed without a variance.

DOUG SAYER (4545 Sutphen Court 43026) stated that he works for Flower Emporium. They are a professional seasonal business operating spring garden centers in Ohio. He noted that they are willing to relinquish some of the signage as long as they could have a 2 x 4 sign over the door for identification and a 4 x 8 banner by the roadway temporarily just to let people know they are open for business. The colorful flowers on display will enhance speak for itself. He apologized that they opened without a permit but was not familiar with Symmes' zoning regulations.

MR. RUEHLMANN wanted to know what the hours of operation would be and how long they would like to operate at the site.

MR. SAYER stated that they usually operation from 9am to 9pm but since this market is smaller they plan to operate from 9am to 7pm. They would like to have a multi-year option to operate on the site.

MR. HAVILL thought the business was a good fit with the industrial area. A sign on the building is appropriate. He suggested that they approve the variance for two years.

MR. RUEHLMANN agreed. He suggested that the hours of operation be from 9am to 8pm and that the variance be granted for three years.

MR. WOLFE wanted to hear from the property owner.

AL STIVERS (10776 Loveland Madeira Road, 45140) stated that he does not have any issues with the hours of operation or signage.

MR. RUEHLMANN made a motion to consider the following:

RESOLUTION
GRANTING
APPEAL NO. 2014-07

WHEREAS, Doug Sayer, Flower Emporium LLC, 1383 St. Rt. 28, Loveland, OH 45140, appellant, on April 7, 2014 filed Appeal No. 2014-07 with the Symmes Township Board of Zoning Appeals under Section 383.1 of the Zoning Resolution, requesting approval to operate a garden center at 10776 Loveland Madeira Road, Symmes Township, Hamilton County, Ohio; and

WHEREAS, a public hearing was held on said appeal on May 5, 2014, 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 an "E" Residence and "F" Light Industrial District; and

WHEREAS, Article XXXV provides, in part, that the operation of a transient vendor is permitted as a Conditional Use provided that the temporary business activity is properly integrated in the overall neighborhood and that said use shall be evaluated by the Board of Zoning Appeals on an individual basis; and

WHEREAS, Section 394 provides for the specific findings of fact pertaining to a special zoning certificate for a Transient Vendor; and

WHEREAS, according to testimony offered at the public hearing, the applicant is requesting approval to operate a garden center annually on the site of LA Supply from March 15th through July 15th to sell plants and flowers; and

WHEREAS, according to further testimony offered at the public hearing, the garden center would contain a nine hundred sixty (960) square-foot temporary greenhouse structure and a large table display area; and

WHEREAS, according to further testimony offered at the public hearing, the property is located on the south side of Loveland Madeira Road, just west of Lebanon Road; and

WHEREAS, according to further testimony offered at the public hearing, the garden center would be located in a gravel parking lot at the front of the property and situated between two access drives serving LA Supply; and

WHEREAS, according to further testimony offered at the public hearing, the property is currently used as a landscaping business with large bins for stone, rock, gravel, and mulch and contains a construction landfill; and

WHEREAS, according to further testimony offered at the public hearing, the applicant is requesting signage over the main entrance of the greenhouse, a temporary freestanding sign along the roadway, and a banner to announce the opening of the center for the first 30 days of operation; and

WHEREAS, according to further testimony offered at the public hearing, Section 394 in Article XXXV, Conditional Uses, requires that a Transient Vendor only be

authorized after the Board makes specific findings of fact, based upon evidence presented, that the temporary business activity is properly integrated in the overall neighborhood related to each of the following factors:

- a. Location of Sales - The temporary sales activity is located in an “E” Residence District which is permitted as of right. The proposed location of the temporary sales area would likely improve the appearance of the otherwise industrial site by screening an existing construction trailer and by locating flowers and plants in a gravel area that is currently used for parking and storage of stone and rock;
- b. Size of the Business – The proposed layout of the temporary greenhouse and sales area would fit well into an area between the two access drives serving the property. The site would include sufficient parking and would not increase the amount of the site being used for commercial and industrial purposes.
- c. Location and Intensity of Display – The location and intensity of the display area fits well into the overall site and would not be too intense for the overall flow and usability of the site;
- d. Parking Adequacy – Vehicles will be parked in an existing gravel parking area to the east of the proposed sales area. The identified parking area appears adequate for temporary seasonal sales;
- e. Hours of Operation - The hours of operation will be from 9:00 a.m. to 8:00 p.m. No residential properties would be impacted by the proposed use;
- f. Noise - There is no loudspeaker system; the site is located in an industrial and commercial corridor so there should be no issues with noise;
- g. Access and Traffic Impact - There would be no change to the circulation pattern of the site. Two existing driveways would be utilized for the proposed temporary sales activity. Also, since the operation is small there would not likely be any impact on traffic flow in the retail and industrial corridor area;
- h. Duration of Business – The site would be limited to garden center sales between March 15th and July 15th annually. The four month period is consistent with other conditional uses granted by the Board for temporary flower sales in Symmes Township.
- i. Compatibility with Adjacent Uses - All of the adjacent properties on the south side of Loveland Madeira Road are zoned and used for commercial or industrial activities. The properties on the north side of Loveland Madeira Road are zoned residential but are vacant and the properties have steep slopes. The proposed use would be compatible with adjacent uses.

WHEREAS, Section 381, empowers this Board to approve by resolution those uses listed as conditional uses; and

WHEREAS, Section 383.6 provides that the Board shall approve the conditional use, approve the conditional use subject to further specified approvals or modifications necessary to achieve full compliance with all standards, or disapprove the conditional use; and

WHEREAS, it is the consensus of this Board, after careful consideration of all the facts, testimony, and evidence submitted, that approval of the requested Conditional Use is appropriate at this particular location and in the particular matter proposed in that the proposed plan complies with the standards and conditions set forth in Article XXXV of the Zoning Resolution; and

NOW, THEREFORE BE IT RESOLVED that upon consideration of the foregoing, the Symmes Township Board of Zoning Appeals moves to approve the Conditional Use for the property located at 10776 Loveland Madeira Road as per the plans submitted in accordance with the authority granted in Section 381 and does hereby determine that a conditional use and 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 proposed temporary garden center be allowed to operate annually for a period of three years from March 15 through July 15 during the hours of 9:00 a.m. to 8:00 p.m.;
2. That, the greenhouse structure for the proposed temporary garden center not exceed nine hundred sixty (960) square feet;
3. That, a sign over the door of the temporary greenhouse not exceed eight (8) square feet in size and a sign placed along the roadway not exceed thirty two (32) square feet;
4. That, the temporary garden center not be relocated or enlarged without the approval of this Board;
5. That, the temporary garden center remain exactly as shown on the plats and plans submitted to this Board;
6. That, the proposed temporary garden center comply in all other respects with Symmes Township regulations 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.

MR. MISRACH seconded the motion and the roll call vote was as follows:

Mr. Flagel – ‘aye’; Ms. Harlow – ‘absent’; Mr. Havill – ‘aye’; Mr. Misrach – ‘aye’; Mr. Ruehlmann – ‘aye’; Mr. Wolfe – ‘aye’.

APPROVAL OF MINUTES

MR. FLAGEL made a motion to approve the minutes of the April 7, 2014 meeting.

MR. RUEHLMANN seconded the motion and the roll call vote was as follows:

Mr. Flagel – ‘aye’; Ms. Harlow – ‘absent’; Mr. Havill – ‘aye’; Mr. Misrach – ‘aye’;
Mr. Ruehlmann – ‘aye’; Mr. Wolfe – ‘aye’.

ADJOURNMENT

The meeting adjourned at 8:30 p.m.

Approved: _____
Luanne Felter
Secretary