

RECORD OF PROCEEDINGS

**Minutes of Regular – BZA Meeting
Held at Township Administration Building**

September 8, 2014

MINUTES OF SYMMES TOWNSHIP BOARD OF ZONING APPEALS REGULAR MEETING

SEPTEMBER 8, 2014

The meeting was called to order at 7:00 p.m. Members of the Commission present were: Mr. Flagel, Ms. Harlow, Mr. Misrach 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 HEARING

MR. WOLFE convened the public hearing for BZA 2014-11 for the property located at 11726 Seven Gables Road.

MR. SNYDER stated that the request is for approval to construct a new two-story office building for Horter Financial that exceeds the height limit with various parking, landscape and wall sign adjustments. The property is located on the south side of Seven Gables Road at the northwest intersection of Mason Road and Montgomery Road and zoned "O" Residence District (with Subservient Office & Business Uses).

The applicant would like to demolish a vacant building and construct a new twenty-five thousand (25,000) square foot commercial office building with an associated ninety-four (94) space parking lot with one new access drive onto Seven Gables Road. The applicant submitted plans for a flat roof but have since changed the design. No updated plans have been provided at this time. Due to irregular setbacks in this area, the applicant is requesting that the parking lot setback be reduced to ten (10) feet along Seven Gables Road so that the entire stretch of frontage contains a uniform parking lot setback. Also, the right-of-way line on Mason Road is not properly aligned with the centerline; therefore, the proposed commercial office building would also be setback ten (10) feet from the right-of-way line along Mason Road. Plantings are proposed along the building in lieu of a streetscape buffer on Mason Road due to the irregular alignment. A streetscape buffer is proposed along Seven Gables Road as required. Finally, the boundary line is buffered with existing vegetation along the southern boundary line and provides adequate screening from a public park.

ANN LYNCH (728 Wells, Cincinnati) presented updated elevations of the proposed office building. She stated that the building would be fifty two (52) feet high at the highest point with an average height of forty (40) feet to allow for a pitched roof that will blend with the residential character of the area. Signage is proposed for the south side of the building façade facing Montgomery Road and the east side of the building façade facing Mason Road. Both wall mounted signs would be forty-nine point five (49.5) square feet. A ground mounted monument sign is proposed in the northeastern corner of the site.

MR. WOLFE stated that he didn't have any issues with the proposed office building and thinks it will add character to the corner. He also doesn't believe the setback variance requests are unreasonable because the right-of-way lines have changed.

MS. HARLOW had a concern about the height of the building.

MR. MISRACH admitted that he liked the flat roof better but didn't think the height of the building would be a problem because the property slopes down approximately six (6) to eight (8) feet. He

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believes the property has been vacant too long and thinks the office building will be a nice addition to the area.

MR. FLAGEL noted that he is in favor of granting the variances because the property has practical difficulties.

Mr. Flagel made a motion to consider the following:

**RESOLUTION
GRANTING
APPEAL NO. 2014-11**

WHEREAS, Platte Design, 1404 Race Street, Suite 300, Cincinnati, OH 45202, appellant, on August 4, 2014 filed Appeal No. 2014-11 with the Symmes Township Board of Zoning Appeals under Section 183 of the Zoning Resolution, seeking a variance from the literal enforcement of Sections 98.5-1, 98.5.2, 98.5-3, 320.3-1, 312, 328.1-2, 328.2-1, 328.2-2 and 328.2-6 of said Resolution as applied to the property at 11726 Seven Gables Road, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on August 4, 2014, applied to the Symmes Township Zoning Inspector for a Zoning Certificate for the construction of a commercial office building that exceeds the height limit with less setback than required and includes various parking, landscape and wall sign adjustments; and

WHEREAS, said Zoning Inspector, on August 4, 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 September 8, 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 519.15 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 "O" Residence District (with Subservient Office and Business Uses); and

WHEREAS, Section 98.5-1 provides, in relevant part, the minimum setback for buildings in an "O" Residence District shall be forty (40) feet for front yards when constructed adjacent to or abutting any residence districts; and

WHEREAS, Section 98.5-2 provides, in relevant part, the minimum setback for parking areas in an "O" Residence District shall be twenty (20) feet for front yards when constructed adjacent to or abutting any residence districts; and

WHEREAS, Section 98.5-3 provides, in relevant part, that the maximum height of buildings in an "O" Residence District shall be two (2) stories or thirty (30) feet when constructed adjacent to or abutting any residence districts; and

WHEREAS, Section 320.3-1 provides, in relevant part, for each office building one point zero (1.0) square feet of sign surface area shall be permitted for each linear foot of building frontage; and

WHEREAS, Section 312 provides, in relevant part, that the total linear feet of building length of the façade must face the principal dedicated street upon which the main entrance to the building is situated; and

WHEREAS, Section 328.1-2 provides, in relevant part, that a boundary buffer of twenty (20) feet shall be required in an "O" Residence District abutting a residence district. Such buffer shall have a minimum of three and one-half (3.5) canopy and fifteen (15) shrubs per one hundred (100) linear feet of boundary buffer; and

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WHEREAS, Section 328.2-1 provides, in relevant part, that adjoining rights-of-way shall require streetscape buffers; and

WHEREAS, Section 328.2-2 provides, in relevant part, that the streetscape buffer shall have a depth of ten (10) feet or greater and located adjacent to the right-of-way extending along the entire road frontage unless such buffer interferes with vehicular sight distance at public street intersections; and

WHEREAS, Section 328.2-6 provides, in relevant part, that a streetscape buffer of ten (10) feet in an “O” Residence District shall be required. Such buffer shall be a minimum of two and one-half (2.5) canopy trees and twenty (20) shrubs per one hundred (100) linear feet of boundary buffer required; and

WHEREAS, according to testimony offered at the public hearing, the applicant is requesting approval to construct a new two-story office building that exceeds the height limit with various parking, landscape and wall sign adjustments; and

WHEREAS, according to further testimony offered at the public hearing, the property is located on the south side of Seven Gables Road at the northwest intersection of Mason Road and Montgomery Road; and

WHEREAS, according to testimony offered at the public hearing, the applicant is requesting approval to demolish a vacant building and construct a new twenty-five thousand (25,000) square foot commercial office building with an associated ninety-four (94) space parking lot with one new access drive onto Seven Gables Road; and

WHEREAS, according to further testimony offered at the public hearing, the proposed building would be fifty two (52) feet high at the highest point with an average height of forty (40) feet to allow for a pitched roof that will blend with the residential character of the area; and

WHEREAS, according to further testimony offered at the public hearing, due to irregular setbacks in this area, the applicant is requesting that the parking lot setback be reduced to ten (10) feet along Seven Gables Road so that the entire stretch of frontage contains a uniform parking lot setback; and

WHEREAS, according to further testimony offered at the public hearing, the proposed office building will be located ten (10) feet from the right-of-way line along Mason Road. This right-of-way line is not properly aligned with the centerline; and

WHEREAS, according to further testimony offered at the public hearing, the applicant is proposing signage on the south side of the building façade facing Montgomery Road and the east side of the building façade facing Mason Road. Both wall mounted signs would be forty-nine point five (49.5) square feet. A ground mounted monument sign is proposed in the northeastern corner of the site; and

WHEREAS, according to further testimony offered at the public hearing, a streetscape buffer is proposed along Seven Gables Road. Plantings are proposed along the building in lieu of a streetscape buffer on Mason Road due to the irregular alignment; and

WHEREAS, according to further testimony offered at the public hearing, the boundary line is buffered with existing vegetation along the southern boundary line and provides adequate screening from a public park; and

WHEREAS, according to further testimony offered at the public hearing, access to the proposed building would be gained via one curb cut off of Seven Gables Road that would align with the existing Township Safety Service Center curb cut located to the north on Seven Gables Road; and

WHEREAS, according to further testimony offered at the public hearing, a paved pedestrian path is proposed connecting the proposed building with a future sidewalk along Mason Road; and

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WHEREAS, 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 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 Sections 98.5-1, 98.5.2, 98.5-3, 320.3-1, 312, 328.1-2, 328.2-1, 328.2-2 and 328.2-6 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 Sections 98.5-1, 98.5.2, 98.5-3, 320.3-1, 312, 328.1-2, 328.2-1, 328.2-2 and 328.2-6 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 98.5-1, 98.5.2, 98.5-3, 320.3-1, 312, 328.1-2, 328.2-1, 328.2-2 and 328.2-6, 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 commercial office building shall not exceed twenty five thousand (25,000) square feet and the roof height shall not exceed forty five (45) feet in height as measured in accordance with the Zoning Resolution;
2. That, the proposed commercial office building shall be constructed in accordance with the revised building elevations submitted at the hearing;
3. That, the proposed commercial office building shall not be located any closer than ten (10) feet from the right-of-way line along Mason Road;
4. That, the parking lot for the commercial office building shall be setback a minimum of ten (10) feet along Seven Gables Road;
5. That, the wall mounted signs for the commercial office building shall not exceed forty-nine point five (49.5) square feet;
6. That, the proposed commercial office building not be relocated or enlarged without the approval of this Board;
7. That, the proposed commercial office building remain exactly as shown on the plats and plans submitted to this Board;
8. That, the proposed commercial office building be maintained in a satisfactory condition at all times;
9. That, the proposed commercial office building comply in all other respects with the Zoning Resolution and the lawful requirements of the Hamilton

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County Building Commissioner;

10. That, the Zoning Certificate and Building permit (if required) for the proposed commercial office building be obtained within sixty (60) days and all work be completed within six (6) months 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. MISRACH seconded the motion and the roll call vote was as follows:

Mr. Flagel – “aye,” Ms. Harlow – “aye”, Mr. Havill – “absent”, Mr. Misrach – “aye”, Mr. Ruehlmann – “absent”, Mr. Wolfe – “aye”.

MR. WOLFE convened the public hearing for BZA 2014-12 for the property at 11397 Montgomery Road.

MR. SNYDER stated that the applicant is requesting approval to construct a new drive-thru lane and outdoor seating areas for the existing Harpers Corner retail shopping center with modifications to the existing parking lot and trash handling areas that would necessitate an additional front yard setback variance and a parking variance for fewer spaces than required. The property is located on the west side of Montgomery Road at the southwest corner of the intersection of Montgomery Road and East Kemper Road and is zoned “E” Residence District (with Subservient Retail).

The applicant has requested approval to construct a new drive-thru facility and relocate the outdoor seating area for the existing Starbucks Coffee tenant located at the south end of the existing retail center. Upon review, it was determined that an existing outdoor seating area for the Panera Bread tenant at the north end of the building was constructed without obtaining a zoning permit. Both seating areas would require a setback variance. The existing dumpster to the rear of the Harpers Corner building would be moved onto adjacent property to allow the construction of six (6) additional spaces and provide room for the required stacking spaces for the proposed drive-thru lane. However, part of the proposed improvement would extend beyond the property line of the subject site and onto the adjacent property which is part of an “EE” Planned Residence (Retail) district and can only be approved by the Symmes Township Zoning Commission.

The shopping center was damaged by a tornado in 1999. In 2000 the owner of the center proposed to rebuild and expand the size of the center increasing the need for a number of setback and parking variances. One of the parking variances approved by the Board of Zoning Appeals in 2000 as part of Case 2000-20 required additional parking spaces and a shared parking agreement between the subject site and Harpers Station. The additional parking spaces were never constructed and the shared parking agreement is no longer in effect. The company that owns Harpers Station currently has a contract to purchase the property at Harpers Corner. In the letter they propose to rectify the parking situation by executing a new parking agreement that would provide a minimum of fifty six (56) spaces.

In my review I found some areas of concern. The turning radius for the proposed drive-thru is narrow. The traffic pattern behind the retail center is only twenty two point five (22.5) feet and should be widened to comply with the Zoning Code. The menu board will be constructed in the middle of the asphalt and no barriers have been delineated. Landscaping should be required to provide definition and improve appearance. Lastly, the driveway on Montgomery Road is very close to the intersection of East Kemper Road. The width should be reduced to thirty (30) feet and the driveway should be turned into a right in/right out only to limit traffic backing up on Montgomery Road and allow for some additional parking.

MR. MISRACH wanted to know why the case was not brought before the Symmes Township Zoning Commission first.

MR. SNYDER stated that the case was brought before the Zoning Commission previously but was withdrawn.

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MR. MISRACH wanted to know if he considered turning the driveway on East Kemper Road into a right in/right out instead of Montgomery Road.

MR. SNYDER indicated that the driveway on East Kemper Road is narrow already and the retail center needs one driveway with full access.

MR. FLAGEL wanted to know if the driveway in the back of the building will allow for two lanes of traffic.

MR. SNYDER said it would that is why he is suggesting that the driveway width be increased.

ROBERT MALLOY, ESQUIRE (600 Vine Street, Suite 2500, Cincinnati 45202) noted that he is the Township's attorney. He announced that he submitted a legal opinion to the Board of Zoning Appeals declaring that the billboard on the subject property is not part of the application and should not be considered.

ANNE MCBRIDE (5725 Dragon Way, Suite 220, Cincinnati 45227) stated that she represents Brixmor Property Group, the owner of Harpers Station. They have an option to purchase Harpers Corner. If the sales goes through they will consolidate the two properties which should relieve some of the zoning issues and help with ongoing maintenance. To clarify, the case was brought before the Zoning Commission in November 2012 but was withdrawn. At that time she was told by the Zoning Commission to go before the Board of Zoning Appeals first. That is why they are here tonight. They are scheduled to appear before the Zoning Commission on September 17, 2014. As Mr. Snyder indicated, Starbucks would like to relocate the outdoor patio to the front of the building to accommodate a drive-thru which would begin in the back of the building and wrap around to the side of the building. The dumpster will be relocated to allow sixteen (16) parking spaces in the back of the building for employee parking. A shared parking agreement will be executed to provide a minimum of fifty six (56) spaces for use by Harpers Corner unless the properties are combined then all the tenants will share a common parking area. The site plan has been modified after they got the Staff Report and includes a twenty four (24) foot driveway to accommodate a two-way drive aisle and turning radius. Landscaping will be added near the employee parking for better aesthetics.

MR. WOLFE had concerns about delivery trucks blocking traffic.

MS. MCBRIDE stated that she has represented Panera Bread in the past and recalls most of their deliveries occurring between Midnight and 4 a.m.

JACK PFLUM (7541 Hosbrook Road, Cincinnati 45243) stated that he is a traffic engineer and has been asked by Ms. McBride to examine the driveway on Montgomery Road. He is familiar with the retail site and understands the restrictions of the driveway on Montgomery Road; however, he checked the crash records at that site from 2009 to 2013 and found that it is not a high accident area. There have only been 30 accidents in the past four years with no fatalities. He was out at the site during noontime and found the traffic patterns worked well with no cars backed up onto Montgomery Road. He believes that the tenants of the retail center mostly have repeat customers and know how to maneuver traffic in this area.

MR. MISRACH wanted to know if there will be problems with stacking as customers leave the drive-thru lane.

MR. PFLUM thought that was speculative. No one knows if the traffic will even increase with the addition of a drive-thru.

MARTIN LILES (22054 Farming Road, Farmington MI) stated that he is the representative from Brixmor Property Group. They have owned the Harpers Station property since 2003 and take pride in the community. He realizes that Harpers Corner property has challenges but if they purchase it they can make the two parcels more cohesive. He would like to see Starbucks achieve a drive-thru so they can obtain a long-term lease.

MR. WOLFE noted that the biggest problem he can see is the driveway on Montgomery Road and wanted to know if Bixmor is willing to modify it.

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MR. LILES stated that he understand any modifications to the driveway would have to be brought before the Ohio Department of Transportation and once they get involved there is a risk that they could lose it. If that occurred it would pose a potential risk to the sale of the property.

MR. MISRACH stated that he likes the plan and the idea one company owning both properties. He doesn't think parking will be a problem since they are providing employee parking in the back. He also does not want to make any modifications to the Montgomery Road driveway because they could risk losing it.

The Board agreed.

MR. MISRACH made a motion to consider the following:

**RESOLUTION
GRANTING
APPEAL NO. 2014-12**

WHEREAS, McBride, Dale Clarion, 5725 Dragon Way, Suite 220, Cincinnati, OH 45230, appellant, on August 4, 2014 filed Appeal No. 2014-12 with the Symmes Township Board of Zoning Appeals under Section 183 of the Zoning Resolution, seeking a variance from the literal enforcement of Board of Zoning Appeals Case No. 2000-20 and Section 104.1 of said Resolution as applied to the property at 11397 Montgomery Road, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on August 4, 2014, applied to the Symmes Township Zoning Inspector for a Zoning Certificate for a parking variance to support proposed tenant expansion and parking lot modifications; and

WHEREAS, said Zoning Inspector, on August 4, 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 September 8, 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 519.15 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 "E" Residence District (with Subservient Retail); and

WHEREAS, Section 104.1 provides, in relevant part, there shall be a front yard having a depth of not less than fifty (50) feet; and

WHEREAS, Section 141 provides, in relevant part, there shall be one parking space for each two hundred twenty-two (222) square feet for shopping centers, one (1) parking space for each one hundred (100) square feet of floor area for restaurants and one (1) space for a transaction plus five (5) stacking spaces per lane for a drive-through facility; and

WHEREAS, according to testimony offered at the public hearing, the applicant is requesting approval to construct a new drive-thru lane and outdoor seating areas for the existing Harpers Corner retail shopping center with modifications to the existing parking lot and trash handling areas that would necessitate an additional front yard setback variance and a parking variance for fewer spaces than required; and

WHEREAS, according to further testimony offered at the public hearing, the property is located on the west side of Montgomery Road at the southwest corner of the intersection of Montgomery Road and East Kemper Road; and

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WHEREAS, according to testimony offered at the public hearing, the applicant has requested approval to construct a new drive-thru facility and outdoor seating area for the existing Starbucks Coffee tenant at the south end of the existing retail center; and

WHEREAS, according to further testimony offered at the public hearing, an existing outdoor seating area for the Panera Bread tenant at the north end of the building was constructed without obtaining a zoning permit; and

WHEREAS, according to further testimony offered at the public hearing, the existing dumpster to the rear of the Harpers Corner building would be moved onto adjacent property to allow the construction of six (6) additional spaces and provide room for the required stacking spaces for the proposed drive-thru lane; and

WHEREAS, according to further testimony offered at the public hearing, the shopping center was damaged by a tornado in 1999. In 2000 the owner of the center proposed to rebuild and expand the size of the center increasing the need for a number of setback and parking variances; and

WHEREAS, according to further testimony offered at the public hearing, one of the parking variances approved by the Board of Zoning Appeals in 2000 as part of Case 2000-20 required additional parking spaces and a shared parking agreement between the subject site and Harpers Station; and

WHEREAS, according to further testimony offered at the public hearing, the additional parking spaces were never constructed and the shared parking agreement is no longer in effect; and

WHEREAS, according to further testimony offered at the public hearing, a new parking agreement will be executed and recorded with the adjacent Harpers Station property owner to provide a minimum of fifty six (56) spaces for exclusive use by the subject site unless the subject site is consolidated with the adjacent Harpers Station property, which negates the need for a parking variance to Section 141 of the Zoning Resolution; and

WHEREAS, according to further testimony offered at the public hearing, the applicant believes that customers utilizing a drive-thru especially during peak morning hours will reduce the need for additional parking on site; and

WHEREAS, according to further testimony offered at the public hearing, the traffic pattern behind the retail center for the proposed drive-thru would be feasible with a driveway width of twenty two point five (22.5) feet but that the aisle could be widened to twenty-four (24) feet to comply with the Zoning Resolution; and

WHEREAS, according to further testimony offered at the public hearing, part of the proposed improvement would extend beyond the property line of the subject site and onto the adjacent property which is part of an "EE" Planned Residence (Retail) district and can only be approved by the Symmes Township Zoning Commission; and

WHEREAS, according to further testimony offered at the public hearing, all existing landscaping on the site will be retained with no other landscaping required; and

WHEREAS, according to further testimony offered at the public hearing, traffic will not be affected by vehicles utilizing the entrance/exit drive on Montgomery Road; and

WHEREAS, Section 184.6 of the Zoning Resolution 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

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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 Board of Zoning Appeals Case No. 2000-20 and Section 104.1 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 104.1 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 Board of Zoning Appeals Case No. 2000-20 and with Section 104.1 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 setback for the northwest corner of the building be permitted no closer than forty-eight (48) feet from the right-of-way on East Kemper Road;
2. That, the required twenty (20) foot parking setback shall be reduced to zero (0) feet along the East Kemper Road and Montgomery Road frontages;
3. That, the proposed four hundred (400) square-foot outdoor seating area for Starbucks Coffee on the southeast corner of the building shall be permitted to be located forty-three (43) feet from the Montgomery Road right-of-way;
4. That, the existing five hundred (500) square-foot outdoor seating area for Panera Bread on the north side of the building shall be permitted to be located forty-four (44) feet from the East Kemper Road right-of-way;
5. That, a parking agreement shall be executed and recorded with the adjacent Harpers Station property owner to provide a minimum of fifty-six (56) spaces for exclusive use by the subject site unless the subject site is consolidated with the adjacent Harpers Station property and that such agreement must be provided prior to the issuance of any further Zoning certificates;
6. That, all parking aisles on the property shall meet the width requirements of the Zoning Resolution;
7. That, all existing landscaping on the site shall be retained and shall be maintained at all times;
8. That, the approval of the requested variances and modification on the subject property is contingent upon approval of the associated off-site modifications on the Harpers Station property by the Symmes Township Zoning Commission within one year from the date of this approval, including the proposed sixteen (16) parking spaces, relocated dumpster and dumpster enclosure, and encroachment of the drive-thru lane on the adjacent property;
9. That, the drive-thru lane and all other site improvements shall be constructed and located exactly as shown on the plats and plans submitted to the Board;

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10. That, the drive-thru lane and all other site improvements shall not be relocated or enlarged without the approval of this Board;
11. That, the drive-thru lane and all other site improvements comply in all other respects with the Zoning Resolution and the lawful requirements of the Hamilton County Building Commissioner;
12. That, the Zoning Certificate and Building permit (if required) for the drive-thru lane and all other site improvements 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. WOLFE seconded the motion and the roll call vote was as follows:

Mr. Flagel – “aye,” Ms. Harlow – “aye”, Mr. Havill – “absent”, Mr. Misrach – “aye”, Mr. Ruehlmann – “absent”, Mr. Wolfe – “aye”.

MR. WOLFE convened the public hearing for BZA 2014-13 for the property at 8675 East Kemper Road.

MR. SNYDER stated that the applicant is requesting approval to construct a new indoor tennis facility and associated site improvements at Harpers Point Club. The property is located west of the intersection of East Kemper Road and Pemman Drive and zoned "E" Residence District (with Subservient Retail).

The applicant has proposed to redevelop the courtyard area between the L-shaped main club building currently occupied by an outer row of six (6) tennis courts and inner row of five (5) tennis courts with a one thousand seven hundred thirty (1,730) square foot outdoor pool and building. Five (5) clay tennis court will be relocated to the outer row and include a covered pergola, seating area, concessions, locker room, play area, and auxiliary rooms to serve the new pool which will be located between the courts and main building. A chain link fence with wind screen will be relocated five (5) feet to the southern property line. A new twenty one thousand (21,000) square foot metal building is proposed to house three (3) tennis courts along the western edge of the site and a twenty five (25) meter swimming pool with diving well, slide landing area and kids pool. A second forty (40) foot by twenty (20) foot pool would be constructed to the east along with an adult area, bar/hut and outdoor seating area. A third small baby pool would also be provided with an outdoor seating and deck area, family restrooms and storage.

The site currently has one hundred twenty four (124) available parking spaces. With the proposed redevelopment of the site a total of two hundred thirty two spaces (232) would be required. A shared parking agreement has been obtained from the shopping center to the west for fifty six (56) additional spaces which would allow the site to provide one hundred eighty (180) parking spaces. A streetscape buffer has been proposed along the East Kemper frontage. No improvements have been proposed to the main club building. Finally, the setback requirements for the existing club building do not comply with the Zoning regulations. The building is setback seventeen point four (17.4) feet from the southern property line. However, none of the improvements will encroach into this area.

DAVID CLARK (3700 Park Drive, Suite 190B, Cincinnati 45242) presented photos of the site to address the rear yard setback. The existing building and southern parking lot do not comply with the Zoning requirements due to a walkway along the south side of the building setting the parking lot back only fifteen (15) feet. However, there is an existing row of canopy trees along the southern façade of the building that provides buffering between the apartments to the south. Since the pool and outdoor tennis courts are not utilized during the winter months, parking should be adequate.

MR. MISRACH noted that the parking spaces at Kroger should be adequate. However, he suggested that a driveway be constructed between the two properties so that members who cannot find a parking space do not have to exit back onto East Kemper to park in the Kroger parking lot.

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MR. CLARK stated that he liked the idea and will consider it.

STEVE CONTARDI (8675 East Kemper Road, Cincinnati 45249) stated that the club is busy from Memorial Day to Labor Day usually in the early morning and late afternoon hours. They also have swim meets in the summer. However, there are no parking issues during the rest of the year.

MR. MISRACH stated that he has seen the place when there is a swim meet and said it can be chaotic. He reiterated that a cut through would be a great benefit.

MR. WOLFE stated that he does not foresee any problems. The club has been a great tenant.

MR. FLAGEL made a motion to consider the following:

**RESOLUTION
GRANTING
APPEAL NO. 2014-13**

WHEREAS, McGill Smith Punshon, 3700 Park 42 Drive, Suite 190B, Cincinnati, OH 45241, appellant, on August 4, 2014 filed Appeal No. 2014-13 with the Symmes Township Board of Zoning Appeals under Section 183 of the Zoning Resolution, seeking a variance from the literal enforcement of Sections 105.1, 105.5, 328.1-3, 346.2 and 141 of said Resolution as applied to the property at 8675 East Kemper Road, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on August 4, 2014, applied to the Symmes Township Zoning Inspector for a Zoning Certificate for the construction of new buildings and site improvements with less parking and rear yard setback than required; and

WHEREAS, said Zoning Inspector, on August 4, 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 September 8, 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 519.15 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 "E" Residence District (with Subservient Retail); and

WHEREAS, Section 105.1 provides, in relevant part, that the minimum setback for buildings shall be fifty (50) feet for rear yards; and

WHEREAS, Section 105.5 provides, in relevant part, that buffer yards and streetscape plantings be required; and

WHEREAS, Section 328.1-3 provides, in relevant part, a boundary buffer of twenty-five (25) feet shall be required along abutting residential districts or residential use property. Such buffer shall have a minimum of four and one-half (4.5) canopy trees and ten (10) shrubs per one hundred (100) linear feet of boundary buffer required; and

WHEREAS, Section 346.2 provides, in relevant part, no fence or wall located in the rear yard shall be built to a height greater than six (6) feet above grade; and

WHEREAS, Section 141 provides, in relevant part, that recreation facilities open to the public for a fee shall have one parking space for each fifty (50) square feet of pool area, eight (8) spaces for each indoor tennis court and five (5) spaces for each outdoor tennis court; and

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WHEREAS, according to testimony offered at the public hearing, the applicant is requesting approval to construct a new indoor tennis facility and associated site improvements at Harpers Point Club; and

WHEREAS, according to further testimony offered at the public hearing, the property is located west of the intersection of East Kemper Road and Pemmican Drive; and

WHEREAS, according to testimony offered at the public hearing, the applicant has proposed to redevelop the courtyard area between the L-shaped main club building currently occupied by an outer row of six (6) tennis courts and inner row of five (5) tennis courts with a one thousand seven hundred thirty (1,730) square foot outdoor pool and building; and

WHEREAS, according to further testimony offered at the public hearing, five (5) clay tennis court will be relocated to the outer row and include a covered pergola, seating area, concessions, locker room, play area, and auxiliary rooms to serve the new pool which will be located between the courts and main building. A chain link fence with wind screen will be relocated five (5) feet to the southern property line; and

WHEREAS, according to further testimony offered at the public hearing, a new twenty one thousand (21,000) square foot metal building is proposed to house three (3) tennis courts along the western edge of the site and a twenty five (25) meter swimming pool with diving well, slide landing area and kids pool. A second forty (40) foot by twenty (20) foot pool would be constructed to the east along with an adult area, bar/hut and outdoor seating area. A third small baby pool would also be provided and outdoor seating and deck area would be provided along the entire pool area along with family restrooms and storage; and

WHEREAS, according to further testimony offered at the public hearing, gated access would be provided through the site from the adjacent off-site parking area to the west as well as from the covered sidewalk along the south side of the existing club building; and

WHEREAS, according to further testimony offered at the public hearing, a streetscape buffer has been proposed along the East Kemper frontage; and

WHEREAS, according to further testimony offered at the public hearing, no improvements have been proposed to the main club building; and

WHEREAS, according to further testimony offered at the public hearing, the setback requirements for the existing club building do not comply with the Zoning regulations. The building is setback seventeen point four (17.4) feet from the southern property line. None of the improvements will encroach into this area; and

WHEREAS, according to further testimony offered at the public hearing, the existing building and southern parking lot do not comply with the Zoning requirements due to a walkway along the south side of the building setting the parking lot back only fifteen (15) feet. There is an existing row of canopy trees along the southern façade of the building that provides buffering and shade for the walkway and building between the apartments to the south; and

WHEREAS, according to further testimony offered at the public hearing, the site currently has one hundred twenty four (124) available parking spaces. With the proposed redevelopment of the site a total of two hundred thirty two spaces (232) would be required. A shared parking agreement has been obtained from the shopping center to the west for fifty six (56) additional spaces which would allow the site to provide one hundred eighty (180) parking spaces. Since the pool and outdoor tennis courts are not utilized during the winter months, parking should be adequate; and

WHEREAS, Section 184.6 of the Zoning Resolution 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

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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 105.1, 105.5, 328.1-3, 346.2 and 141 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;

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 Sections 105.1, 105.5, 328.1-3, 346.2 and 141 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 105.1, 105.5, 328.1-3, 346.2 and 141, 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 improvements shall not be relocated or enlarged without the approval of this Board;
2. That, the proposed improvements remain exactly as shown on the plats and plans submitted to this Board;
3. That, the proposed improvements be maintained in a satisfactory condition at all times;
4. That, the proposed improvements 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 improvements be obtained within sixty (60) days and all work be completed within six (6) months 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.

ADOPTED at a regularly scheduled meeting of the Symmes Township Board of Zoning Appeals in session this 8th day of September.

Mr. WOLFE seconded the motion and the roll call vote was as follows:

Mr. Flagel – “aye,” Ms. Harlow – “aye,” Mr. Havill – “absent,” Mr. Misrach – “aye,” Mr. Ruehlmann – “absent,” Mr. Wolfe – “aye”.

APPROVAL OF MINUTES

Ms. Felter stated that the minutes of the August 4, 2014 meeting need to be approved. Messrs. Flagel and Wolfe noted that they were not in attendance at the August meeting and suggested that the minutes be tabled until the October meeting when more Board members would be in attendance.

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ADJOURNMENT

The meeting adjourned at 9:30 p.m.

Approved: _____

Luanne Felter
Secretary